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Seventy-first session
Item 115 (d) of the provisional agenda*
Elections to fill vacancies in subsidiary organs and other elections: election of fourteen members of the Human Rights Council

Letter dated 1 August 2016 from the Permanent Representative of China to the United Nations addressed to the President of the General Assembly

I have the honour to inform you that the Government of China has decided to present its candidature to the Human Rights Council for the term 2017-2019 at the elections to be held in New York in 2016 during the seventy-first session of the General Assembly.

I enclose herewith a copy of the aide-memoire of commitments on the candidature of China for membership of the Human Rights Council, in accordance with the provisions of General Assembly resolution 60/251 (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under item 115 (d) of the provisional agenda.

(*Signed*) **Liu** Jieyi
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

* A/71/150.

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United Nations A/71/295

General Assembly

Distr.: General
4 August 2016

Original: English

Seventy-first session
Item 133 of the provisional agenda*
Review of the efficiency of the administrative and financial functioning of the United Nations

Activities of the Independent Audit Advisory Committee for the period from 1 August 2015 to 31 July 2016

Report of the Independent Audit Advisory Committee

Summary

The present report covers the period from 1 August 2015 to 31 July 2016. During the period, the Independent Audit Advisory Committee held four sessions, which were presided over by J. Christopher Mihm, Jr. (United States of America) as Chair and Maria Gracia Pulido Tan (Philippines) as Vice-Chair. Mr. Mihm was re-elected Chair, and Ms. Pulido Tan was elected as Vice-Chair for 2016. As has been the case during the history of the Committee, all members attended all of the sessions during their appointments.

Section II of the report contains an overview of the activities of the Committee, the status of its recommendations, and its plans for 2017. Section III sets out the detailed comments of the Committee, including the specific request of the General Assembly to continue to examine the operational independence of the Office of Internal Oversight Services, in particular in the area of investigation.

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I. Introduction

1. The General Assembly, by its resolution 60/248, established the Independent Audit Advisory Committee as a subsidiary body to serve in an expert advisory capacity and to assist it in fulfilling its oversight responsibilities. By its resolution 61/275, the Assembly approved the terms of reference for the Committee, as well as the criteria for its membership, as contained in the annex to that resolution. In accordance with its terms of reference, the Committee is authorized to hold up to 4 sessions per year. To date, the Committee has held 35 sessions since its inception in January 2008.

2. In accordance with its terms of reference, the Committee submits an annual report containing a summary of its activities and related advice to the General Assembly. The present ninth annual report covers the period from 1 August 2015 to 31 July 2016.

3. In section II, paragraph 3, of its resolution 70/111, the General Assembly invited the Committee to continue to examine the operational independence of the Office of Internal Oversight Services (OIOS), in particular in the area of investigation. The observations, comments and recommendations of the Committee in that respect are contained in section III.C of the present report.

4. The Committee is also required to advise the General Assembly, inter alia, on the compliance of management with audit and other oversight recommendations; the overall effectiveness of the risk management procedures and deficiencies in the internal control systems; the operational implications of the financial statements and the reports of the Board of Auditors; and the appropriateness of the accounting and disclosure practices in the Organization. The Committee also advises the Assembly on the steps necessary to facilitate cooperation among the oversight bodies.

5. The present report addresses the issues identified during the reporting period as they pertain to the above-mentioned responsibilities of the Committee.

II. Activities of the Independent Audit Advisory Committee

A. Overview of the sessions of the Committee

6. During the reporting period, the Committee held four sessions: from 9 to 11 December 2015 (thirty-second session), from 17 to 19 February 2016 (thirty-third session), from 4 to 6 May 2016 (thirty-fourth session) and from 25 to 27 July 2016 (thirty-fifth session). Three of the sessions were held at United Nations Headquarters. The thirty-second session was held at the United Nations Office at Geneva.

7. The Committee functions under its adopted rules of procedure, as contained in the annex to its first annual report (A/63/328). To date, all members of the Committee have a 100 per cent attendance rate at its sessions. All the decisions of the Committee have been unanimous; however, its rules of procedure make provision for members to record their dissent with respect to decisions taken by the majority.

8. During the thirty-second session, in December 2015, the members re-elected J. Christopher Mihm, Jr. (United States of America) as Chair and elected Maria Gracia Pulido Tan (Philippines) as Vice-Chair for 2016. Additional information about the Committee can be found on its website (www.un.org/ga/iaac) in all the official languages of the United Nations.

9. Since its establishment, the Committee has submitted 22 reports to the General Assembly, 2 of which were published during the reporting period. They include the Committee's annual report to the Assembly for the period from 1 August 2014 to 31 July 2015 (A/70/284) and the report to the Assembly, through the Advisory Committee on Administrative and Budgetary Questions, on the proposed budget of OIOS under the support account for peacekeeping operations for the period from 1 July 2015 to 30 June 2016 (A/70/759).

B. Status of the recommendations of the Committee

10. Although it meets only four times per year, typically for three days at each session, the Committee has accomplished important achievements to date, particularly in relation to enterprise risk management and the operations of the Office of Internal Oversight Services. The Committee follows up on the implementation of its recommendations as a standard agenda item at each session and looks forward to seeing the full effects of the actions taken by management and by the Office. Some of the significant recommendations made by the Committee during the reporting period relate to:

(a) The Secretary-General consulting with the Committee in selecting the head of the Office of Internal Oversight Services, to ensure that the candidates under consideration have relevant leadership expertise in the functions of internal audit, inspection and evaluation and investigation;

(b) The need for senior managers to ensure that enterprise risk management becomes the standard way of doing business and that it is effectively implemented and sustained throughout the Organization;

(c) The need for a central intake system for investigations, which would help with the completeness and accuracy of reporting fraud and presumptive fraud;

(d) The need for a holistic review of the Office of Internal Oversight Services, which would help to ensure that the widespread and significant concerns about the operations, internal working relationships and effectiveness of the Investigation Division would be resolved;

(e) The need for the Office to ensure that the workplans of the respective divisions were guided by the Organization's enterprise risk management strategy;

(f) The need for the Office to ensure that the Investigation Division undertakes proactive investigative work;

(g) The need for the Office to disseminate guidelines and protocols that it would use when advising management and making statements about situations that may be subject to audit or investigation;

(h) The need for management to draft a manual on internal control;

(i) The need for the Organization to monitor key milestones and the overall timeline for the implementation of Umoja by identifying and managing current and any emerging key risks to the achievement of the objectives of the project;

(j) The need for a coordinated strategy to bring the collective work of the oversight bodies in one place so decision makers would have a complete picture of the contributions of the United Nations system towards the implementation of the 2030 Agenda for Sustainable Development;

(k) The need for the oversight bodies to consider developing short topical or organization-specific fact sheets that bring together in one place brief synopses by each of the oversight bodies that are relevant to the topic or organization.

C. Overview of the plans of the Committee for 2017

11. The Committee undertook its responsibilities, as set out in its terms of reference, in accordance with the scheduling of the sessions of the Advisory Committee on Administrative and Budgetary Questions and the General Assembly. The Committee will continue to schedule its sessions and activities to ensure coordinated interaction with intergovernmental bodies and the timely availability of its reports. In a preliminary review of its workplan, the Committee identified several key areas that will be the main focus for each of its four sessions for fiscal year 2017 (see the table below).

Workplan of the Committee from 1 August 2016 to 31 July 2017

Session	*Key focus area*	*Intergovernmental consideration of the report of the Committee*
Thirty-sixth	Review of the 2017 workplan of the Office of Internal Oversight Services in the light of the workplans of other oversight bodies	Advisory Committee on Administrative and Budgetary Questions, first quarter 2017
	Proposed budget of the Office under the support account for peacekeeping operations for the period from 1 July 2017 to 30 June 2018	General Assembly, second part of the resumed seventy-first session
	Operational implications of issues and trends in the financial statements and reports of the Board of Auditors	
	Coordination and cooperation among oversight bodies, including hosting the first coordination meeting of oversight committees	
	Election of the Chair and Vice-Chair for 2017	

Session	*Key focus area*	*Intergovernmental consideration of the report of the Committee*
Thirty-seventh	Status of implementation of oversight bodies' recommendations	General Assembly, second part of the resumed seventy-first session
	Report of the Committee on the Office of Internal Oversight Services support account budget	
	Review of the enterprise risk management and internal control framework in the Organization	
Thirty-eighth	Operational implications of issues and trends in the financial statements and reports of the Board of Auditors	Advisory Committee on Administrative and Budgetary Questions, second quarter 2017
	Proposed programme budget for the Office of Internal Oversight Services for the biennium 2018-2019	General Assembly, main part of the seventy-second session
	Coordination and cooperation among oversight bodies	
	Transformational projects and other emerging issues	
Thirty-ninth	Preparation of the annual report of the Committee	General Assembly, main part of the seventy-second session
	Review of the enterprise risk management and internal control framework in the Organization	
	Status of implementation of oversight bodies' recommendations	
	Coordination and cooperation among oversight bodies	

12. In planning its work, the Committee is mindful of the following relevant events that could have an impact on its work activities:

(a) The various reform/transformational initiatives on which the Organization has embarked, such as mobility, the global service delivery model and Umoja;

(b) The forthcoming transition to a new Secretary-General and the need to sustain the implementation and progress of the organizational transformative initiatives, while being aware that the new Secretary-General will have his or her own priorities and plans;

(c) The end of the terms of office of three of the five members of the Committee, whose three-year terms expire in December 2016.

III. Detailed comments of the Committee

A. Status of the recommendations of United Nations oversight bodies

13. Under paragraph 2 (b) of its terms of reference, the Committee is mandated to advise the General Assembly on measures to ensure the compliance of management with audit and other oversight recommendations. During the reporting period, the Committee reviewed the status of the implementation by management of the recommendations of United Nations oversight bodies, as a standard practice.

Board of Auditors

14. The Board of Auditors reported that the rate of implementation of recommendations for the 12-month period from 1 July 2013 to 30 June 2014, the most recent period for which data are available, continued the upward trend. For example, since 2006/07 until 2013/14, the implementation rate of Board of Auditors recommendations for peacekeeping operations has increased from 32 per cent to 52 per cent.

15. The Committee reviewed management's action on the main Board of Auditor's recommendations that were open for two or more years as at 31 March 2016. Those recommendations are before the Management Committee. Management said that there were 10 main recommendations under review, 8 of which pertained to the regular budget and 1 each to peacekeeping and the Capital Master Plan.

16. Management informed the Committee that of the eight main outstanding recommendations for the regular budget, management believes that four from the biennium 2010-2011 have been implemented; and that the other four from the biennium 2008-2009 (which relate to the automated preparation of the financial statements, the automated management of voluntary contributions, the accuracy of accounts payable and accounts receivable balances) would be fully implemented by the end of 2016.

17. With regard to peacekeeping operations, the Committee was informed that the one outstanding main recommendation related to deficiencies in acquisition planning and global asset management. Management noted that the Global Service Centre was working on a policy on acquisition planning linked to global asset management which would be submitted for review and approval before the end of 2016.

18. As for the Capital Master Plan, the Committee was informed that the outstanding main recommendation related to the adoption of whole life cycle asset investment strategy and assessment of costed options for the through-life maintenance of the Headquarters building. The Administration considers this recommendation to have been implemented based on information it included in its report to the General Assembly on the strategic capital review (A/70/697). The Board has not yet closed this and other recommendations that management believes it has addressed.

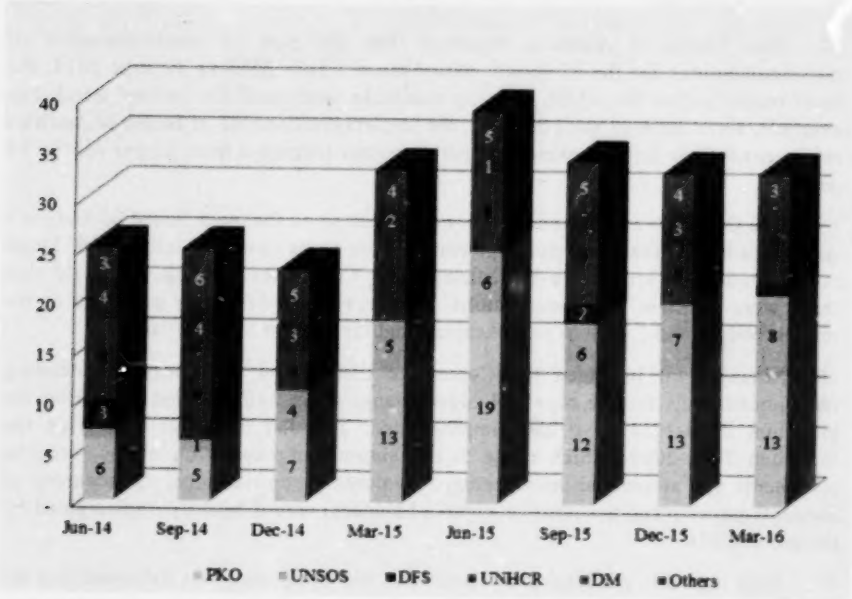
19. **The Committee continues to acknowledge the effort of the Management Committee to oversee the implementation of the Board's recommendations.**

Office of Internal Oversight Services

20. All recommendations categorized as "critical" by OIOS are brought to the attention of the Management Committee for follow-up action, and special focus is placed on those recommendations whose implementation is past due. The Committee receives quarterly updates from the Office and the Department of Management on the implementation of critical recommendations.

Figure I

Trend analysis of critical recommendations to the Office of Internal Oversight Services the implementation of which is past due



Abbreviations: DFS, Department of Field Support; DM, Department of Management; PKO, peacekeeping operations; UNHCR, Office of the United Nations High Commissioner for Refugees; UNSOS, United Nations Support Office in Somalia.

21. Figure I provides a quarterly trend analysis of the critical recommendations issued by OIOS that were past due. The total number of outstanding critical recommendations decreased from 59 at the end of the fourth quarter of 2015 to 53 as at the end of the first quarter of 2016. The largest share of OIOS past due critical recommendations involved peacekeeping missions. In June 2014, 6 critical recommendations involved peacekeeping operations. That number increased to 25 in June 2015, before decreasing slightly to 21 in March 2016. The critical recommendations addressed to the Department of Management that were past due exhibited a declining trend since the second quarter of 2014.

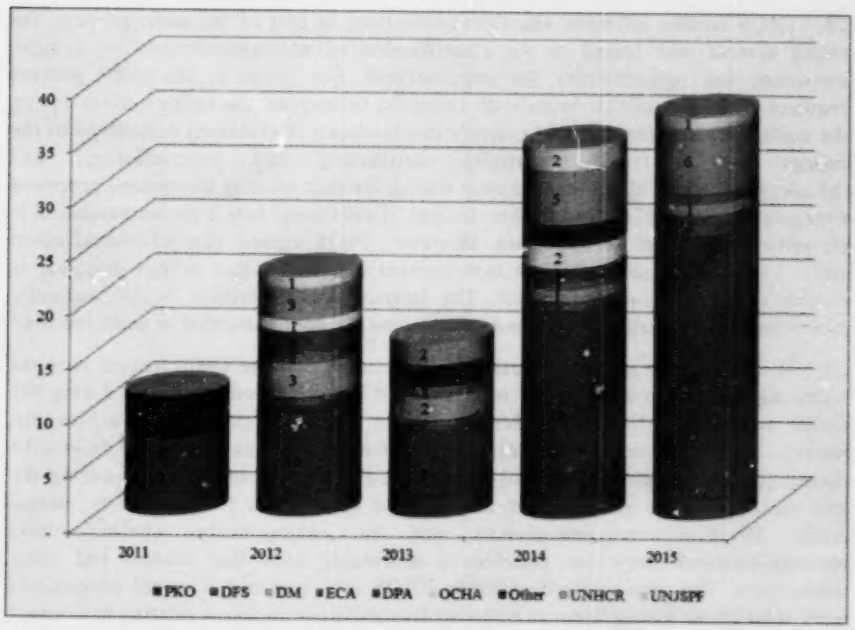
22. **The Committee appreciates the progress made in reducing the number of past due critical recommendations. However, the Committee also reiterates its view on the importance in addressing critical recommendations in a timely manner.**

Trends in the audit report ratings

23. The Committee received a trend analysis of all reports issued by OIOS since the third quarter of 2011, when it introduced the rating system to the first quarter of 2016. The Department of Management informed the Committee that the cumulative figures of OIOS audit reports showed that 78 reports (11 per cent) were rated satisfactory, 529 (70 per cent) were partially satisfactory, 123 (16 per cent) were unsatisfactory and 21 (3 per cent) were unrated.

24. As figure II shows, the majority of all unsatisfactory reports related to peacekeeping operations. In 2015 alone, 26 out of 37 unsatisfactory reports were in the area of peacekeeping operations. As the Committee reported in paragraph 30 of its eighth annual report (A/70/284), the Department of Management noted that there seemed to be a relationship between the number of unsatisfactory reports and the hardship conditions in the field, and that it was studying the issue to establish the underlying causes and would report to the Committee at subsequent sessions. The Committee followed up with management on the issue, and was informed that within peacekeeping operations, there were eight areas with the highest number of critical recommendations and hence, the unsatisfactory ratings. Those areas included safety and security, human resources management, procurement, air operations, engineering, asset management, vehicle fleet management and waste management.

Figure II
Distribution of unsatisfactory reports since 2011



Abbreviations: DFS, Department of Field Support; DM, Department of Management; DPA, Department of Political Affairs; ECA, Economic Commission for Africa; OCHA, Office for the Coordination of Humanitarian Affairs, PKO, peacekeeping operations; UNHCR, Office of the United Nations High Commissioner for Refugees; UNJSPF, United Nations Joint Staff Pension Fund.

25. The Committee also had a discussion with the Department of Field Support. The head of the Department emphasized his personal commitment to addressing audit findings in a timely and thorough manner. Notwithstanding the often harsh conditions under which it operates, the Department has made progress in addressing the underlying causes of unsatisfactory reports, which has led to the reduction in their number. The Department plans to reach out to OIOS to emphasize that audit recommendations that are clear, specific and actionable are those that are most helpful to management. The Department also plans to discuss with OIOS the approach it uses to give ratings to individual reports and whether the basis for those ratings could be made more transparent.

26. In paragraph 31 of document A/70/284, it was reported that OIOS had informed the Committee that it shared management's view that conditions in the field could be quite challenging, owing to the nature of the operating environment, high staff turnover and higher vacancy rates, lower levels of staff experience, and challenges related to security and the accessibility of operations. Headquarters-based operations, on the other hand, usually involved safe and stable environments, lower turnover and vacancy rates, higher levels of staff experience and easier access to timely guidance and supervision.

27. **The Committee continues to be cognizant of the conditions in the field and the challenges faced by field operations. However, given the importance of field operations, the Committee continues to call for a concerted effort to address the weaknesses identified by OIOS in its recommendations.**

28. OIOS further informed the Committee that, as part of the audit process, the rating system was linked to the classification of recommendations — critical, important and opportunities for improvement. For instance, the audit process requires Internal Audit Division audit teams to: (a) explain the rating system during the audit entry conference and to clearly communicate the relevant definitions of the ratings — satisfactory, partially satisfactory and unsatisfactory; and (b) communicate to client management during the exit meeting the overall proposed rating as well as explain and further discuss, if necessary, how a recommendation is classified — critical or important. However, OIOS agreed that additional effort could be made to address client management's concerns that ratings assigned to reports could be more transparent. The Internal Audit Division is also currently reviewing how overall opinions and conclusions are communicated in audit reports.

29. With regard to recommendations, OIOS noted that the audit process requires recommendations to address the root cause of the condition identified during the audit, and ensure that recommendations are specific, measurable, achievable, realistic and time-bound. The audit process also requires that recommendations be discussed with client management throughout the audit field work and during the exit meeting. Client management also has the opportunity to respond to Internal Audit Division recommendations and to communicate whether these recommendations were not feasible in addressing identified control and other weaknesses. The above notwithstanding, OIOS indicated that it would continue to work with client management to better understand their concerns relating to Internal Audit Division recommendations and would continue to ensure that recommendations were specific, measurable, achievable, realistic and time-bound.

30. **While welcoming the effort that OIOS is making to address the concerns of management, the Committee believes that more needs to be done to allay**

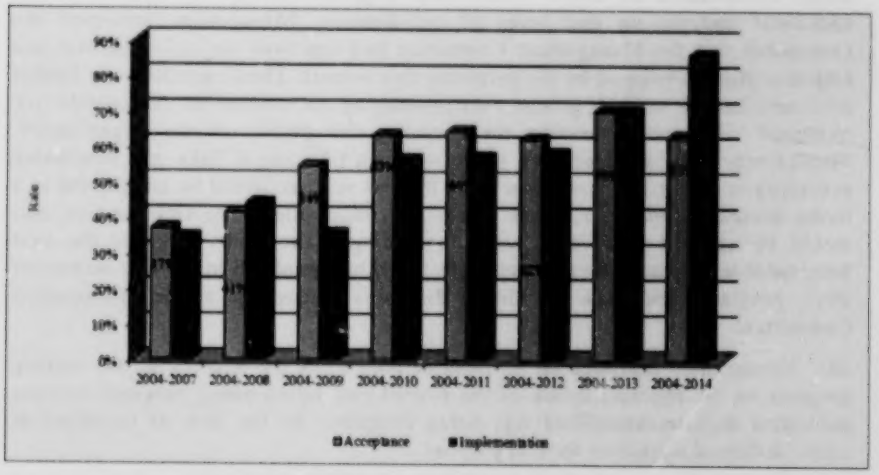
management's concerns. The Committee recommends that OIOS continue to take further initiatives to reach out to stakeholders to ensure that there is a clear understanding as to how reports are rated and recommendations developed.

Joint Inspection Unit

31. In its annual report for 2015 and programme of work for 2016 (A/70/34), the Joint Inspection Unit noted an improvement in the rates of acceptance and implementation of its system-wide recommendations by the 12 largest participating organizations, which reflected an average acceptance rate of 79 per cent and an average implementation rate of 83 per cent.

32. For the United Nations Secretariat, the average acceptance rate decreased to 63 per cent for the period 2007-2014 — the most recent data available — compared to 70 per cent for the previous period. On a positive note, however, the implementation rate increased to 86 per cent for the 2007-2014 period, compared to 70 per cent for the 2006-2013 period (see figure III). The Administration noted that the lower acceptance rate was mainly due to the continued inclusion of recommendations that were addressed to the General Assembly and the United Nations System Chief Executives Board for Coordination, for which the Secretariat has no authority. In addition, according to management, the Joint Inspection Unit acknowledged that the implementation of some of the accepted recommendations might take several years, as the recommendations addressed structural issues, challenged established policies and practices and proposed new directions, requiring cross-departmental and senior management or legislative body decisions.

Figure III
Status of acceptance/implementation by the Secretariat of recommendations of the Joint Inspection Unit



33. Overall, there continues to be a steady improvement in the implementation rate of the Joint Inspection Unit's recommendations.

B. Risk management and internal control framework

34. Paragraphs 2 (f) and (g) of the terms of reference of the Committee mandate the Committee to advise the Assembly on the quality and overall effectiveness of risk management procedures and on deficiencies in the internal control framework of the United Nations.

Enterprise risk management

35. In paragraph 45 of its eighth report (A/70/284), the Committee noted that top management needed to continue to actively lead enterprise risk management efforts to ensure that identifying and managing risks becomes a standard way of doing business across the Organization. Moreover, the Committee fully agrees with the Board's observations about the importance of embedding enterprise risk management in departments' day-to-day work, as noted in the Board of Auditors' most recent report (A/70/5 (Vol. I)).

36. Given the interdependent nature of the various departments and offices in achieving the organizational goals and objectives, the Committee, in paragraph 45 of document A/68/273, recommended that the Management Committee and the Under-Secretary-General for Management, who is the official responsible for enterprise risk management in the Organization, undertake every effort to ensure a genuinely integrative approach to risk management that looked across the Organization's units and ensure a coordinated and comprehensive approach to identifying and managing risk. The Committee noted that success would be achieved only through a concerted push to break down or avoid silos, in other words, by managing the holistic-enterprise-portfolio of risk facing the Organization.

37. While noting management's comment in 2015 that the primary critical risks that had been identified were cross-cutting and closely interrelated, hence requiring close coordination of efforts across the Organization, the Committee sought additional updates on that level of coordination. Management informed the Committee that the Management Committee had approved the risk-treatment and response plans developed by the corporate risk owners. The Committee was further informed that the working groups were monitoring the work of the responsible risk treatment teams and assessing the evolving risk profile of the Organization. Management also indicated that, while work on the critical risks was continuing according to the agreed multi-year plan, the risk register would be maintained as a living document able to represent the actual risk profile of the Organization, and would be updated every two years. Accordingly, the field work for the next Secretariat-wide enterprise risk assessment will be completed in the first quarter of 2017, providing the basis for further dedicated discussions at the Management Committee.

38. Management informed the Committee that, while the Secretariat was making progress on the implementation of the overall risk action plans, progress in some individual departments/offices was being hampered by the lack of resources to create dedicated capacities for that purpose.

39. **The Committee continues to commend the enterprise risk management committee and management for their commitment in making enterprise risk management an integral and important management tool of the Organization. The Committee believes that top management will need to continue to actively**

lead enterprise risk management efforts to ensure that systematically identifying and managing risks becomes a standard way of doing business across the Organization.

40. **The Committee reiterates its previous recommendation that the Secretary-General ensure that his Office and the departments have the capacities they need to effectively implement and sustain enterprise risk management. The Committee will continue to follow up on those and other enterprise risk management issues as a major priority. Specifically, the Committee will pay attention to reviewing and documenting concrete examples of how enterprise risk management is being used in specific ways to manage organizational risks and better achieve results.**

Extrabudgetary funding and management

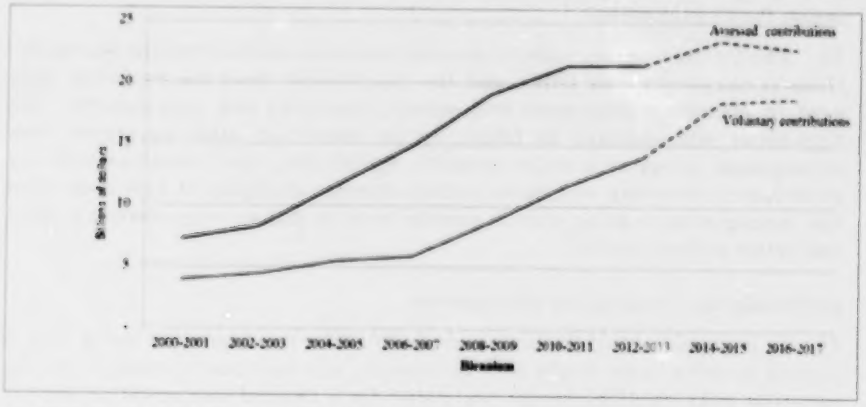
41. In paragraph 42 of its last report (A/70/284), the Committee noted that it planned to delve more deeply over the coming year into one or more of the six enterprise risks identified by the Secretariat for a detailed assessment of what is being done and what can be done to better manage the risk. For this period, the Committee selected extrabudgetary funding and management as the risk it would focus on.

42. In paragraph 50 of its fourth annual report (A/66/299), the Committee said it believed that relying on extrabudgetary funding for one quarter of its funding exposed the Organization in general and the respective programmes in particular, to risks which the Committee believed the Administration should articulate and manage.

43. To better understand the issues associated with extrabudgetary funding, the Committee first looked at budget trends for both volume I (United Nations) and volume II (peacekeeping) and also analysed the expenditures of programmes funded in part from assessed contributions but with significant voluntary contributions, including: the United Nations Environment Programme, UN-Habitat, the United Nations Office on Drugs and Crime (UNODC), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

44. The Committee found a rising trend in the amount of voluntary contributions between 2006-2015. Assessed contributions rose sharply between 2002-2011 and then flattened before slightly rising. The rise in assessed contributions during that period primarily is due to increases in peacekeeping budgets, whereas for the voluntary contributions, that increase is mainly in UNHCR and the Office for the Coordination of Humanitarian Affairs (see figure IV).

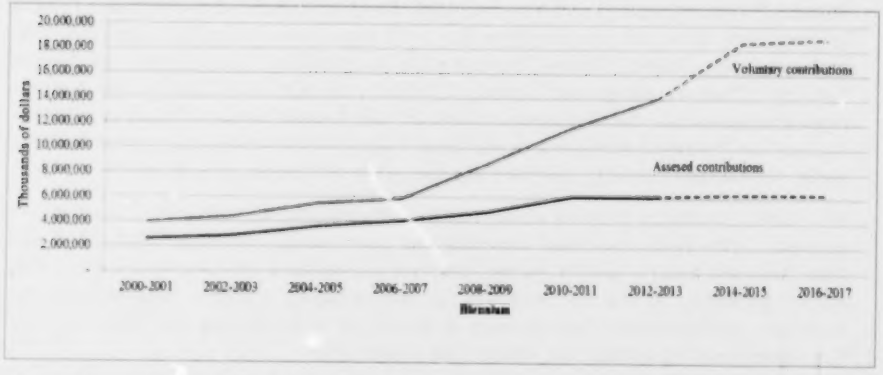
Figure IV
Assessed versus voluntary contributions for the regular and peacekeeping budget



Source: Board of Auditors, vols. I and II, and proposed programme budget fascicles.

45. The importance of managing extrabudgetary funding risk becomes more evident when one looks at the non-peacekeeping budget trends. Figure V shows that, outside of the peacekeeping environment, voluntary contributions have far outstripped assessed contributions. **In fact, the growing gap between voluntary contributions and assessed and other contributions vividly illustrates the enterprise risk that needs to be effectively managed.**

Figure V
Non-peacekeeping budget trends



Source: Proposed programme budget fascicles.

46. The Committee also examined the impact of voluntary funding on programme delivery, and what other extrabudgetary funding dependent entities were doing to secure funding, such as the Office for the Coordination of Humanitarian Affairs, UNODC, UNHCR and UNRWA. Such entities rely on voluntary sources for over 90 per cent of their funding needs and therefore are most directly affected by the inherent risk of relying on extrabudgetary funding to achieve their objectives.

47. In its report on voluntary contributions in United Nations system organizations (JIU/REP/2007/1), the Joint Inspection Unit noted the impact of the growth in voluntary contributions on programme delivery. Importantly, the report noted the positive effects of voluntary contributions on operational growth, programme delivery, and indirectly, efficiency gains generated. However, the report also highlighted negative effects that needed to be managed. First was a lack of predictability, in that funding based on assessed contributions carries greater certainty about the level of funding than voluntary contributions. The absence of predictability can undermine the planning and delivery of programmes and projects in the long and short term. Second, the Joint Inspection Unit noted that extrabudgetary funding dependent organizations are vulnerable to a loss of funding if a major contributor withdraws support. Third, most extrabudgetary resources carry conditionalities, limiting the flexibility of the receiving organization. Finally, because donors can affect the balance of programmes through earmarked funds, the Unit was concerned that voluntary contributions could distort programme priorities.[1]

48. The Committee had discussions with the Controller, who is the corporate risk owner for the extrabudgetary funding and management risk. The Controller informed the Committee that a working group of staff from the Office of Programme Planning, Budget and Accounts, the Economic Commission for Africa, UN-Habitat, the Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High Commissioner for Human Rights, the Office of the Under-Secretary-General for Management, UNODC, the Department of Economic and Social Affairs, the Department of Peacekeeping Operations and the Ethics Office had been established in November 2014 to review potential risks and analyse levels of exposure. According to the Organization's "Risk Register" of September 2014, the risk of extrabudgetary funding and management is defined in this way:

(a) Inability to obtain extrabudgetary funding which may impact the ability of certain departments to achieve their objectives;

(b) Reliance upon extrabudgetary funding may jeopardize or appear to impact the independence of the United Nations as projects that obtain earmarked funding may be given higher priority;

(c) Inability to identify, establish and maintain the optimal structure and controls for trust funds resulting in a loss or misuse of assets.

Inability to obtain extrabudgetary funding

49. As a follow-up to its 2007 report, the Joint Inspection Unit reviewed the resource mobilization function within the United Nations system (JIU/REP/2014/1). The Unit noted that, of the 28 United Nations organizations reviewed, 5, including the Secretariat, do not have a formal strategy for resource mobilization. The report recommended, inter alia, that organizations which have not already done so, develop resource mobilization strategies. According to the Joint Inspection Unit, such strategies would entail seeking multi-year agreements; deepening partnerships with traditional donors; broadening the donor base; and expanding support from the private sector.

[1] JIU/REP/2007/1, paras. 21-49.

50. **The Committee notes that the majority of extrabudgetary funding dependent entities have some form of resource mobilization strategy and an office dedicated to securing funds. Consistent with Joint Inspection Unit findings and related recommendations, the Committee recommends the establishment of a Secretariat-wide resource mobilization strategy. In developing a resource mobilization strategy, the Secretariat could draw upon the lessons learned and good practices found in paragraph 114 of document JIU/REP/2014/1, for example: maintaining relationship with donors; demonstrating performance, efficiency and effectiveness; and delivering timely and up-front information to donors.**

Risk of relying on extrabudgetary funding which may jeopardize or appear to influence the independence of the United Nations

51. According to the Secretariat risk register, relying on extrabudgetary funding may be perceived as potentially influencing the Organization to focus on donor's priorities as opposed to the broader priorities of Member States. However, management recognizes that most of the extrabudgetary resources departments/offices received have been framed within their specific mandates and programmes of work. **The distortion of programme priorities is not easily measurable. Nonetheless, the Committee urges the Secretariat to carefully monitor the effects, if any, of donor influence in framing the Organization's programme priorities. The Committee plans to follow up on this matter in the subsequent sessions.**

Inability to identify, establish and maintain the optimal structure and controls for trust funds

52. The extrabudgetary funding and management working group decided, as a first step to focus on: (a) the standardization of donor agreements; (b) the selection of implementing partners and contract management; and (c) updating the internal control mechanisms that govern the administration of trust funds.

53. The Committee was informed that, for 2016, the working group planned to:

(a) Issue policies for establishing and managing trust funds and relevant administrative instructions;

(b) Provide corporate guidance on standard procedures for the selection of implementing partners;

(c) Clarify the difference between the implementing partner selection process and the procurement process, and between implementing partnerships and grants;

(d) Institute Secretariat-wide standard agreement by having discussions with key donors.

54. The Committee inquired about the decision to focus initially on internal controls, rather than addressing other pressing issues associated with this critical risk. The Committee was informed that the rationale was to start with the internal control structure in order to increase transparency, accountability and efficiency.

55. The Controller also said that, because the Secretariat was predominantly funded from assessed contributions, the Secretariat has not had the need to develop a resource mobilization strategy. Managing such a strategy requires a specific skill

set, for example, in fundraising and donor relations. In addition, there is no dedicated extrabudgetary unit for coordination policy, strategy, capacity-building, etc. in the Office of Programme Planning, Budget and Accounts.

56. **The Committee notes the effort the Secretariat has made in managing the extrabudgetary risk of the Organization and will continue to monitor the Secretariat's efforts and progress. The Committee also notes that managing the remaining risks under extrabudgetary funding calls for dedicated capacity which may not be available from the working group that is currently addressing this risk.**

57. **Against this background, the Committee reiterates its previous recommendation in document A/66/299, that given the reality of the need to rely on extrabudgetary funding, the Organization needs to fully assess and manage the risks associated with extrabudgetary funding. Part of that assessment and management should include new organizational arrangements and capacity within the Secretariat that may be needed. The Committee will continue to monitor this risk and may select an additional enterprise risk for a detailed assessment in the coming year.**

C. Effectiveness, efficiency and impact of the audit activities and other functions of the Office of Internal Oversight Services

58. Under its terms of reference, the Committee has the responsibility to advise the General Assembly on aspects of internal oversight (resolution 61/275, annex, paras. 2 (c)-(e)). In undertaking to fulfil its mandate, the Committee has maintained its standard practice of meeting with the Under-Secretary-General for Internal Oversight Services and other senior OIOS officials during its sessions. The discussions have been focused on OIOS workplan and budget execution, with significant findings reported by OIOS, operational constraints (if any), post incumbency, the status of implementation by management of OIOS recommendations, including critical recommendations, strengthening investigations and funding arrangements.

59. In its resolution 70/111, the General Assembly, recalling paragraph 67 of its resolution 69/307, invited the Committee to continue to examine the operational independence of OIOS, in particular in the area of investigation functions.

Operational independence and effectiveness

60. The Committee reiterates its previous observations in section A of the annex to its second annual report (A/64/288), in which the Committee provides a detailed explanation of what constituted operational independence, noting that, with regard to operational independence, OIOS should have an appropriate degree of real and perceived independence from the management of the United Nations and funds and programmes for which it provides oversight services. Operational independence includes the ability of OIOS to: determine its final workplans and the content of its final reports; make requests for adequate resources to undertake its work; conduct its work with the cooperation of management and all applicable parties, free from intervention; select staff for the Office; and communicate directly to the General Assembly and the Secretary-General in connection with matters of critical

importance to the United Nations and/or the Office. The Committee's comments, observations and recommendations are guided by the above principle.

Guidelines and protocols

61. In its previous review of the operational independence of OIOS, the Committee made several recommendations, including that OIOS develop guidelines and protocols when advising management and making statements about situations that may be subject to audit or investigation; establishing a central intake system in the Secretariat; and a holistic review of OIOS.

62. In its discussion with OIOS, the Committee was informed that the recommendation on developing guidelines and protocols was being finalized, subject to management consultation. OIOS reiterated that no public statements should be made unless related assignments had been completed and related reports made public in accordance with relevant General Assembly resolutions. OIOS also informed the Committee that each Division would ensure that their respective manuals have relevant sections dealing with advisory services in line with the applicable professional practice standards. **The Committee welcomes these initiatives and urges that OIOS finalize the guidelines and protocols without delay.**

Central intake mechanism for investigations

63. The idea for implementing a central intake mechanism first came out of the 2005 World Summit at which Member States decided that OIOS should be strengthened with respect to its expertise, capacity and resources. Following an external quality assessment of the Investigation Division in June 2007, the Secretary-General submitted his report (A/62/582). In paragraph 27 of the report, the Secretary-General noted that OIOS concurred with the external review on the need for a case intake committee and could establish one accordingly.[2] In May 2010, OIOS informed the Committee that an intake committee had been established to manage the intake of all investigation cases and to determine whether information reported to or identified by the Investigation Division should be investigated. The intake committee was changed in 2014 to an approach where the process was conducted under the authority of the Director of Investigation based on recommendations by the three Deputy Directors. The intake process would be supported by an intake secretariat, comprised of a representative of the Operational Standards and Support Section of OIOS.

64. Subsequently, following a review of the cases brought before the new internal justice system, management emphasized the need for a central intake mechanism. In addition, in paragraph 69 of its seventh annual report (A/69/304), the Committee noted that OIOS remarked that centralizing the intake process could go a long way in strengthening the overall investigation function and would undeniably add to the understanding of the universe of misconduct in the of the Secretariat.

65. The need for an efficient and effective intake system has been a long-standing concern of this Committee. For example, the need for a central intake mechanism, particularly in the context of fraud reporting, was identified and recommended as a good practice by both the Board of Auditors and the Joint Inspection Unit. In its

[2] Paragraph 27 of A/62/582.

report, the Joint Inspection Unit noted that a central intake mechanism has the benefit of ensuring a "complete picture" and permits that cases be prioritized and resources used more efficiently (JIU/REP/2016/4, paras. 242-243). The Unit recommended that United Nations entities implement a central intake mechanism for all fraud allegations. The need for a "complete picture" was reinforced by the Board of Auditors in paragraph 148 of its report A/69/5 (Vol. I).

66. In 2015, OIOS informed the Committee that the new case management system (GoCase) had the capability to act as a central intake system for the Secretariat, but it had not been scoped to do so. Finally, in its resolution 70/111, the General Assembly endorsed the Committee's recommendation contained in paragraphs 64 and 89 of its eighth annual report (A/70/284), which called for the Administration to finalize the scoping of the central intake system.

67. During its thirty-fifth session, held in July 2016, the Committee followed up on the status of the central intake system. OIOS informed the Committee that the central intake initiative has not moved forward. According to OIOS, the lack of progress is due to the absence of: consensus among concerned offices on the need and modalities for the mechanism, and resources for the development and maintenance of an appropriate system using the GoCase platform. OIOS further noted that, owing to its investigation staff being preoccupied with other pressing issues, such as the surge of sexual exploitation and abuse cases, it would be difficult to embark on another wide-ranging initiative which could distract OIOS from its current focus/direction. Finally, OIOS pointed to the need to address long-standing internal problems and issues within the Investigation Division, which limited its ability to implement a major initiative at this time.

68. OIOS also noted that certain objectives of a central intake mechanism (ensuring the completeness of reporting of the universe of all potential and actual investigation, and more accurate reporting of fraud and presumptive fraud) were being addressed by the organization. For example:

(a) OIOS expects that the forthcoming fraud and corruption policy would de facto result in OIOS becoming the single repository for fraud reports in line with the recent Joint Inspection Unit recommendation contained in its report on fraud prevention, detection and response in United Nations system organizations (JIU/REP/2016/4);

(b) The revised administrative instruction ST/AI/371 will place a burden on programme managers to report their investigations to OIOS;

(c) The recent efforts with regard to enhancing the organizational response to sexual exploitation and abuse may have certain impacts.

69. **Notwithstanding the response from OIOS, the Committee strongly regrets that this critical recommendation continues to remain unimplemented. The Committee calls on OIOS to implement a central intake mechanism as expeditiously as possible. This will require concerted effort from the Management Committee. The Committee will continue to follow up on this matter in subsequent sessions.**

Response of the Office of Internal Oversight Services into the allegations of sexual exploitation and abuse in the Central African Republic

70. The Committee joined many others in being distressed by the sexual exploitation and abuse cases in the Central African Republic and took careful note of the report of the external independent panel on the United Nations response to the allegations of sexual exploitation and abuse in the Central African Republic. The Committee enquired of OIOS what it was doing in response to the report of the Panel on the Central African Republic. OIOS indicated that it was responding to the Panel's report through close engagement with the Secretary-General's Adviser on sexual exploitation and abuse, working on a number of emergent work streams and assisting with issues arising from the response to the individual recommendations in the report. Moreover, as a response to the spike in activity in the Central African Republic, OIOS further informed the Committee that it was drawing on its global resources and had arranged a deployment schedule to ensure that there was a team of six, including interpreters, forming three enquiry teams on the ground in the country at any one time. OIOS noted that the sheer volume of cases has raised a number of issues concerning the Office's working practices and procedures, which will be reviewed and used to inform the future development of its staff. Furthermore, the Committee was informed that the resourcing level of the OIOS investigative team was insufficient and does not allow the necessary level of resilience needed to deal with serious incidents over an extended period of time as well as maintain focus on the concurrent workload.

71. **The risk of sexual exploitation and abuse in peacekeeping operations and the need for the protection of civilians more generally are issues where OIOS, in each of its three divisions, has done important work. The Committee recommends that OIOS pull together that work — along with relevant insights offered by other analysis — to identify the specific set of management controls that need to be in place from the outset of a peacekeeping operation. OIOS could then audit the strength of these controls as new operations are formed. In this way, the Organization would be better able to stop abuses before they occur, the most important benefit, as well as reducing the need to investigate cases.**

Comprehensive review of the Office of Internal Oversight Services

72. OIOS provided an update on the status of the peer reviews for each Division. Regarding the Internal Audit Division, OIOS noted that an external quality assessment would commence in September, to be completed by the end of 2016. With regard to the Inspection and Evaluation Division, OIOS noted that the last independent review was in 2012 and they were hiring a consultant to carry out an independent review of standards of evidence in 2017/2018. Finally, regarding the Investigation Division, OIOS informed the Committee that the priority had been in stabilizing the leadership of the Division. Now that this was completed, the Under-Secretary-General will discuss with the new Director of Investigation the appropriate timing and scope of an independent review.

73. The Committee was cognizant that the Panel built on the Committee's recommendation for a comprehensive review of OIOS, with special emphasis on the Investigation Division. **The Committee is encouraged by the commitment of the Under-Secretary-General to improve the operations of OIOS and continues to**

believe that such a review would be helpful to her efforts to ensure the widespread and significant concerns about the operations, internal working relationships and effectiveness of the Investigation Division be resolved. The Committee's recommendation urged that the review look at issues that have perennially affected OIOS, including the high vacancy rates and inter- and intra-office dynamics.

Organizational enterprise risk management and oversight work planning

74. In paragraphs 11 and 19 of its report on the proposed OIOS budget under the support account for peacekeeping operations for the period from 1 July 2016 to 30 June 2017 (A/70/759), the Committee noted that there was no demonstrated link between the six critical risks of the Organization and the OIOS risk assessment. The Committee further recommended that future workplans explicitly show how they are guided by the Organization's enterprise risk management strategy. OIOS informed the Committee that it had taken into account the organizational risk assessment when preparing its annual workplan, albeit to a differing extent by each division. OIOS also provided the Committee with a list of proposed audit assignments for 2017 highlighting the specific risk category to be addressed. OIOS informed the Committee that it planned to further strengthen its consideration of the organizational risk register in identifying the most critical and specific corporate risks that the office should address. This would entail a more systematic analysis of risk drivers, internal controls and risk responses for each of the critical/very high risks, which would result in oversight focus areas. OIOS also emphasized that such oversight focus areas need to be addressed by OIOS in an integrated/collective manner across all divisions and into the divisional workplans.

75. **The Committee is pleased that OIOS is taking the initiative to demonstrate the link between the organizational enterprise risk management strategy and its programme of work and is using this as a vehicle in further integration across its divisions. The initiative will help strengthen the integration among the OIOS workplan, its budget proposals, and the major risks facing the organization. The Committee will follow up on this matter in its subsequent sessions.**

Performance auditing and the 2030 Agenda for Sustainable Development

76. The Committee sought input from OIOS on how it plans to contribute to the Organization's efforts to embody the integrated, universal and indivisible nature of the 2030 Agenda through its own operations. In response, OIOS informed the Committee that it recognized the critical importance of efficient and effective implementation of United Nations mandate for supporting the 2030 Agenda. As such, the Inspection and Evaluation Division has started to systematically include reviews of the Sustainable Development Goals in its evaluations where appropriate, for example, in its recently completed evaluations of the Economic Commission for Europe and the Economic and Social Commission for Western Asia. OIOS also informed the Committee that its upcoming thematic evaluation of regional commissions will focus on the commissions' statistical work in support of measuring the achievements and the implementation of internationally agreed sustainable development goals.

77. For the longer term, the Committee was informed that OIOS had designated support for the Sustainable Development Goals as one of the high-risk focus areas for the organization. The Committee understands that OIOS is developing a detailed oversight strategy and related plan to assess the Organization's contributions to the achievement of the 2030 Agenda.

78. **The Committee is very encouraged by OIOS initiatives to develop a detailed oversight strategy and related plan for work related to the implementation of the 2030 Agenda for Sustainable Development and its commitment to provide management and the General Assembly with important information they will need to gauge progress and pinpoint improvement opportunities in the Secretariat's efforts. The Committee is equally committed to continuing to monitor OIOS efforts on these important issues.**

D. Financial reporting

79. During the reporting period, the Committee engaged in discussions with the Board of Auditors, the Under-Secretary-General for Management, the Controller and the Project Director of Umoja on a number of issues relating to financial reporting. The issues discussed included:

(a) Status of the benefit realization plans for IPSAS and Umoja;

(b) Implementation of Umoja;

(c) Internal control and the United Nations anti-fraud policy.

Implementation of the International Public Sector Accounting Standards and benefits realization

80. With respect to implementation of the International Public Sector Accounting Standards (IPSAS), the Committee continued to be routinely apprised of the project status and has noted the continued issuance of unqualified audit opinions by the Board of Auditors. The IPSAS-compliant financial statements for 2014 and the 2015 financial statements for the peacekeeping operations received unqualified audit opinions. The audits of the 2015 non-peacekeeping financial statements were still in progress.

81. The Committee was also informed that the Management Committee endorsed a five-pillar plan to support IPSAS sustainability. The purpose of the plan is to ensure that IPSAS compliance can be maintained, and to support the use of IPSAS-triggered information to better manage the Organization. Significant progress has been made in key areas of the IPSAS sustainability plan, including the plan for implementation of the statement on internal controls and the management of IPSAS benefits. The Committee was informed that the IPSAS team would deploy the sustainability plan and then the residual functions of the team would be institutionalized by the end of 2017.

82. **The Committee believes that the issuance of unqualified audit opinions by the Board of Auditors is a very positive indication of the Secretariat's efforts to ensure sustainability of IPSAS compliance and to institutionalize IPSAS-compliant processes into day-to-day operations.**

83. In paragraph 94 of its seventh annual report (A/69/304), the Committee indicated that it would review the IPSAS benefit realization plan and make comments in subsequent reports. The Committee has since received updates, including on the approval by the Management Committee of the benefit realization plan for IPSAS at the end of 2014. The Committee was informed that IPSAS benefits management was one of the five major pillars of the IPSAS sustainability plan. The Committee was also informed that the IPSAS benefits realization plan was translated into detailed tracking/reporting requirements for five major benefit categories and related 15 individual benefits, requiring all major organizational entities to report on progress made.

84. The Committee was also informed that in the context of the two reporting cycles, it became apparent that there was clear qualitative impact of IPSAS which affected several areas and led to the tightening of processes and procedures, as well as the introduction of new processes. Furthermore, management believes the visibility created and discipline required by IPSAS, in combination with other change initiatives, has led to decreasing trends in asset and inventory holdings of some offices/field missions over the past financial cycles and to better budget implementation.

85. **The Committee welcomes the progress that the Secretariat has made in implementing IPSAS, including the finalization of the benefits realization plan and the articulation of the major expected benefits. The Committee looks forward to receiving details of those and other documented benefits from IPSAS, which, as noted in paragraph 93 of document A/69/304, were to be realized in conjunction with the full implementation of Umoja.**

Implementation of Umoja

86. With respect to Umoja, the Committee held several sessions on the progress made thus far. Management shared with the Committee the road map for Umoja for 2016-2017. This road map includes a soft roll-out of the service delivery for peacekeeping operations in July 2016, roll-out of the financial statements module in August 2016, roll-out of cluster 5 (national staff in peacekeeping operations and uniformed personnel) in November 2016, roll-out of the first of the International Civil Service Commission compensation package changes in July 2016, with two elements (mobility and discontinuation of non-removable) to be deployed in November 2016. The Committee was also informed that while continuing with the implementation of Umoja, management has had to contend with the expected post implementation challenges. For example, management indicated that 67 (63 from cluster 3 and 4 from cluster 4) high-level recommendations in eight broad areas were raised by the Umoja post-implementation review task force in the areas of service delivery, finance, human resource, payroll, grants, procurement, travel and general issues. Of the 67 recommendations, 14 have been closed, 41 are in progress and 12 are for long-term, continuous improvements.

87. The Committee was also informed of additional challenges that the project faces, including: an aggressive workplan which has been complicated by the International Civil Service Commission package; budget pressure — the risk the funds may not be enough to see the enterprise resource planning project through to the end; staff issues; the expected transition in the Secretary-General leadership; and the Umoja Extension 2 roll-out.

88. The Committee welcomes the progress achieved in implementing Umoja. The Committee noted that as Umoja moves into the stabilization phase, the key issues now centre on ensuring that the Organization consistently develops the capacity to manage Umoja and use its outputs to make decisions. This requires that the Secretariat ensure that managers and staff have the needed knowledge and capacities, through training, knowledge-sharing and other means. Such capacity development is vital to achieving the reasonable demands of the Member States for the benefit realization of Umoja, given the cost, effort and time that was needed to implement the project.

Internal control system and anti-fraud policy

89. In paragraph 106 of its most recent report (A/70/5 (Vol. I)), the Board of Auditors underscored the fact that the complex and risk-prone environment in which the United Nations operates demanded that a strong internal control framework and risk management system be in place. In that regard, the Controller informed the Committee that the statement on internal controls was one of the key deliverables of IPSAS sustainability plan. The envisaged approach to strengthening internal controls and leading to the Statement on Internal Control will be based on an organization-wide assurance process. The assurance process will require all heads of departments, offices and missions to submit an annual assurance statement to the Controller. Managers will be supported in their efforts by self-assessment checklists, communication and training materials as well as hands-on training in assessing internal controls locally. The Committee of Sponsoring Organizations of the Treadway Commission integrated internal control framework will serve as the conceptual framework for the United Nations approach to the framework that will support the statement on internal controls.

90. The Committee was informed that the next steps therefore include defining the assurance deliverables such as immediate self-assessment checklists and related assurance statements. A pilot phase is foreseen for the fall of 2016 and early 2017. Subject to the outcome of the initial assurance process, implementation of the first statement on internal control is envisaged for peacekeeping for financial year 2016/17 and volume I for financial year 2017.

91. **The Committee commends the progress made to improve the internal control system and stresses the significance of educating and providing guidance through various means to managers and all affected staff on the importance of strong internal controls. The Committee will follow up on the issue at subsequent sessions.**

92. With respect to fraud, the Committee has long opined on the importance of dealing with and preventing fraud. In paragraphs 57 and 58 of its report for the period from 1 August 2011 to 31 July 2012 (A/67/259), the Committee noted that the low level of investigated cases dealing with procurement could suggest a failure to detect fraud. In document A/69/304, the Committee recommended that OIOS establish a fully integrated long-term strategic plan that addressed, inter alia, the challenges and tendencies of procurement fraud apparent in the financial statements of oversight bodies. Finally, in paragraph 89 of its most recent report (A/70/284), the Committee recommended that the Administration finalize the scoping of the central intake system and noted that the anti-fraud policy is not an end in itself but

only the first step in ensuring that the internal control framework is implemented effectively.

93. The Committee took the findings and recommendations of the Joint Inspection Unit report on fraud prevention, detection and response in the United Nations system into account when reviewing the Organization's anti-fraud efforts. The Committee notes that, in paragraph 55 of its report, the Unit believed that an effective anti-fraud policy should include at a minimum, inter alia:

(a) Definition of fraud;

(b) Actions constituting fraud;

(c) Management's responsibility for the prevention and detection of fraud;

(d) Employee and third party responsibilities relating to the prevention and detection of fraud and procedures on how fraud is to be reported;

(e) Directions as to how allegations/incidents are to be managed;

(f) Advice on where further information can be found.

94. **The Committee fully agrees with the Joint Inspection Unit assessment on what constitutes a good anti-fraud policy.**

95. During discussions with management, the Committee was informed that an anti-fraud policy for the Secretariat was being finalized, and should be released later in 2016. The Committee understand that the policy will, inter alia: (a) reiterate the zero-tolerance approach to fraudulent acts; (b) a definition of fraud and corruption; (c) the responsibilities of every concerned actor; (d) the mechanisms for reporting and investigating fraud; and (e) the remedial actions to be taken in case of substantiated fraud.

96. **The Committee examined the anti-fraud policies of other United Nations entities and agrees with the Joint Inspection Unit that entities such as UNDP appear to have some good practices that the Secretariat could consider in implementing its policy framework.**

97. OIOS also informed the Committee that it had been engaging in internal discussions on strengthening the OIOS strategy and approach in addressing fraud risk in the Organization, in particular at the United Nations Joint Staff Pension Fund, implementing partners, procurement and entitlements. According to OIOS, the strategy would include reorganization of the work of the dedicated fraud investigation team in Nairobi, which had been discontinued after a loss of funds by an extrabudgetary donor.

98. In paragraph 87 of its most recent annual report (A/70/284), the Committee was informed that some of the issues encountered when reporting fraud were: different recording systems and methodologies; redaction of confidential information; and different interpretations of fraud and presumptive fraud. OIOS informed the Committee that it was working closely with the Controller's office and agreed with the definition of presumptive fraud and provided a detailed list of fraud and presumptive fraud cases OIOS had taken on in 2015.

99. **Based on the above, and as previously stated in paragraph 66 of the present report, the Committee recommends that a central intake mechanism be implemented in the Secretariat. As mentioned by the Board of Auditors and**

Joint Inspection Unit, this should help with the completeness and accuracy of reporting fraud and presumptive fraud.

E. Coordination among United Nations oversight bodies

100. During the reporting period, in addition to its regularly scheduled meetings with OIOS, the Committee met with other oversight bodies, such as the Joint Inspection Unit and the Board of Auditors, including the Audit Operations Committee. The dialogue allowed for the sharing of perspectives on matters of mutual concern and provided a useful opportunity for cooperation among United Nations oversight bodies.

101. Within its mandate, the Committee sought comments from the three oversight bodies, all of which underscored the existing coordination mechanisms among themselves, including the sharing of their programmes of work. In separate meetings with the Board of Auditors, the Joint Inspection Unit and OIOS, the Committee noted the positive relationship fostered through the tripartite coordination meetings of the oversight bodies and the sharing of workplans in an effort to avoid duplication. The Committee believes that such coordination provides a valuable platform for additional opportunities.

102. The Committee also had discussions with Secretariat oversight focal points. Some expressed their concern that there was no central repository where one could look at the status of oversight recommendations from the Board of Auditors, OIOS and the Joint Inspection Unit. This repository would be separate from the existing recommendation tracking systems currently in place. **The Committee will follow up with management on this in future reports.**

Follow-up and review of the 2030 Agenda for Sustainable Development

103. As noted in paragraph 73 above, OIOS is developing an integrated workplan among its Divisions on work related to the implementation of the 2030 Agenda for Sustainable Development. In discussions with OIOS, the Committee was informed that OIOS is already considering opportunities to work with audit and evaluation colleagues in other United Nations oversight offices to ensure a more broadly coordinated approach to oversight.

104. Moreover, from discussions with the Audit Operations Committee of the Board of Auditors, the Committee understands that the Board of Auditors is exploring opportunities to examine the Organization's efforts to support the 2030 Agenda as part of its audit work. **The Committee is very encouraged by these developments. More generally coordinated audit strategies may identify opportunities to make progress on a recommendation in the Committee's seventh annual report (A/69/304) that oversight bodies consider developing topical or organizationally focused fact sheets that succinctly bring together in one place short synopses by each of the oversight bodies that are relevant to a specific topic or organization. The overall intent is to bring together the collective good work of the oversight bodies in one place so that decision makers and stakeholders can more easily see the key matters that need to be addressed. That synergy will go a long way towards strengthening the oversight regime of the Organization and thereby contribute to improvements in effectiveness, transparency and accountability.**

F. Cooperation and access

105. The Committee reports that it received good cooperation from OIOS and senior management in the Secretariat, including the Department of Management, the Department of Field Support and the Office for the Coordination of Humanitarian Affairs, in discharging its responsibilities. The Committee was given appropriate access to staff, documents and information that it needed in order to undertake its work. The Committee is pleased to report that it continued to work closely with the Joint Inspection Unit and the Board of Auditors. The Committee looks forward to continued cooperation with the entities with which it interacts in order to discharge its responsibilities, as set out in its terms of reference, in a timely manner.

IV. Conclusion

106. In the context of its terms of reference, the Independent Audit Advisory Committee presents the preceding observations, comments and recommendations, as contained in paragraphs 19, 22, 27, 30, 33, 39, 40, 45, 50, 51, 56, 57, 62, 69, 71, 73, 75, 78, 82, 85, 88, 91, 94, 96, 99, 102 and 104 for the consideration of the General Assembly.

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Item 21 (b) of the provisional agenda*
Globalization and interdependence

International migration and development

Report of the Secretary-General

Summary

The present report was prepared in response to General Assembly resolution 69/229 of 19 December 2014. In section II, the report summarizes the latest global migration patterns, highlights the role of migration in population change, and presents the current state of ratification of relevant legal instruments. Section III analyses how migration has been incorporated within the 2030 Agenda for Sustainable Development (see General Assembly resolution 70/1) and the Addis Ababa Action Agenda (see General Assembly resolution 69/313). Section IV illustrates how members of the Global Migration Group and other stakeholders have contributed to the implementation of resolution 69/229. Section V contains recommendations on the organization of the Third High-level Dialogue on International Migration and Development and indicates how future high-level dialogues could contribute to the thematic review of the Sustainable Development Goals and targets. Section VI contains a set of recommendations.

* A/71/150.

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I. Introduction

1. More people are on the move now than ever. The number of international migrants — persons living in a country other than where they were born — reached 244 million in 2015, an increase of 71 million, or 41 per cent, compared to 2000. Economic, social and environmental factors, as well as political instability, will continue to influence global migration trends. At the same time, the world is witnessing the highest level of forced displacement in decades. Today, more than 40 million persons are displaced within countries, while the number of refugees and asylum seekers has surpassed 24 million.[1]

2. Since 2006, the United Nations has stepped up efforts to improve international cooperation on migration in relation to development. The First High-level Dialogue on International Migration and Development in 2006 was the first high-level meeting of the General Assembly dedicated to such issues. The Declaration adopted at the Second High-level Dialogue in 2013 paved the way for the inclusion of migration in the 2030 Agenda for Sustainable Development (see General Assembly resolution 70/1). The General Assembly decided in 2014 to hold high-level dialogues on international migration and development on a regular basis.

3. On 19 September 2016, world leaders will meet at the United Nations for the purpose of upholding the safety and dignity of refugees and migrants, promoting comprehensive responses and enhanced responsibility-sharing for refugees, and ensuring safe, regular and orderly migration (see A/70/59).

II. International migration: a global overview

A. International migrant stock: global levels and trends

4. Globally, there were 244 million international migrants in 2015.[2] Nearly 58 per cent of all international migrants resided in the developed regions, while the developing regions hosted 42 per cent of the world's total.[3] In the North, 61 per cent of all international migrants originated from a developing country, compared to 87 per cent of all international migrants residing in the South. Between 1990 and 2015, the number of international migrants worldwide increased by over 91 million, or 60 per cent. Nearly two thirds of all international migrants in 2015 resided in Europe (76 million) and Asia (75 million). Northern America hosted the third largest number of international migrants (54 million), followed by Africa (21 million), Latin America and the Caribbean (9 million) and Oceania (8 million).

[1] United Nations High Commissioner for Refugees, *Global Trends: forced Displacement in 2015* (Geneva, 2015). Available fromwww.unhcr.org.

[2] United Nations, *Trends in International Migrant Stock: the 2015 Revision* (United Nations database, POP/DB/MIG/Stock/Rev.2015). Available from www.unmigration.org.

[3] Following common practice, the "developed regions", referred to also as the "global North" or simply the "North", include Europe and Northern America plus Australia, New Zealand and Japan, while the "developing regions", or the "global South", include all other parts of the world. This terminology derives from the clear distinction between rich and poor countries or regions that existed as recently as 1960, but which has since disappeared as many countries of the South have undergone rapid development. The terms continue to be used because the categories remain meaningful for some purposes; their use in the present report does not imply any judgement as to the current developmental stage of a particular country or region.

5. International migrants (see box 1) comprised about 3.3 per cent of the world's population in 2015, compared to 2.9 per cent in 1990. In the North, international migrants constituted 11.2 per cent of the total population in 2015, compared to 1.7 per cent in developing regions. Between 1990 and 2015, the proportion of international migrants in the total population grew in the North, while it remained stable in the South. During the same period, the proportion of international migrants in the population increased in Oceania from 18 to 21 per cent, in Northern America from 10 to 15 per cent and in Europe from 7 to 10 per cent. In 2015, Latin America and the Caribbean recorded the lowest proportion of international migrants in the total population (1.5 per cent), followed by Africa and Asia (1.7 per cent each). Africa and Latin America and the Caribbean both experienced a decline in the share of international migrants in the total population between 1990 and 2015. The repatriation of refugees contributed to declining numbers of international migrants in some African countries.

6. In 2015, women comprised 48 per cent of all international migrants worldwide. In the North, the share of women among all international migrants increased from 51 per cent in 1990 to 52 per cent in 2015. The decline in the percentage of female migrants in the South, from 47 to 43 per cent, was fuelled by a strong demand for mostly male construction workers in the oil-producing countries of Western Asia. A high percentage of women among international migrants in Europe (52 per cent) and Northern America (51 per cent) has resulted from ageing among settled migrants and higher life expectancy for women, including migrants. By contrast, male migrants in 2015 significantly outnumbered female migrants in Asia (58 per cent) and Africa (54 per cent).

7. In 2015, 72 per cent of all international migrants were between the ages of 20 and 64, reflecting the close connection between migration and labour market activity. Of the 177 million international migrants in this age range, the majority (59 per cent) resided in the developed regions. Globally, 15 per cent of all international migrants were under the age of 20. This proportion was significantly higher in the developing regions (22 per cent) than in the developed regions (around 10 per cent). Globally, there were 30 million international migrants aged 65 or over in 2015.

B. Contribution of net migration to total population change

8. From 1950 to 2015, the developed regions gained population from positive net migration, or a net inflow of persons as a result of migration, while the developing regions lost population as a result of negative net migration, or a net outflow (see figure).[4] Between 1950 and 2010, positive net migration to the developed regions continued to increase, reaching 3.2 million persons per year during the decade from 2000 to 2010, up from less than 0.3 million per annum in the period from 1950 to 1970. After 2010, the size of the net inflow of persons to the developed regions

[4] Net migration refers to the difference between the number of immigrants and the number of emigrants. If more people immigrate than emigrate, the country gains population owing to positive net migration; if more people emigrate than immigrate, the country loses population through negative net migration. The data on net migration presented here do not include information on the country or region of origin or destination.

declined for the first time in five decades, averaging 2.3 million per year between 2010 and 2015.[5]

Box 1
Who is an international migrant?

Although there is no universally agreed definition of the term, an international migrant has been defined for statistical purposes as a person who changes his or her country of usual residence.[a] A long-term migrant is a person who establishes residence in a different country for a period of at least a year, while a short-term migrant moves to a country other than his or her country of usual residence for a period of at least three months but less than a year. Short-term movements for purposes of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimage are excluded: persons who change their country of residence for such reasons for a period of less than a year are not considered to be migrants.

For durations of one year or more, however, the motivation for the change of residence plays no part in the definition of an international migrant. This feature is illustrated by the framework for describing the arrival of international migrants provided in the *Recommendations on Statistics of International Migration* adopted by the United Nations Statistical Commission in 1997. The framework provides the following seven categories to describe all types of legal admission of foreign citizens: (a) education or training; (b) employment; (c) family reunification or formation; (d) right to free establishment or movement; (e) long-term or permanent settlement; (f) humanitarian reasons; and (g) regularization of legal status.

For the purpose of enumerating the population of international migrants at a single point in time, known also as the "migrant stock", the *Recommendations* provide two alternative definitions. The stock of international migrants, for a given country and date, is defined as those persons currently residing in the country who are citizens of another country (the "foreign" population) or who were born in another country (the "foreign-born" population). Both variants of the definition rely on the core concept of a change of usual residence: with very few exceptions, the persons involved would have lived for at least a year in another country before establishing residence in the country where they live currently. Following these definitions, the "migrant stock" provides a summary measure of lifetime migration.

Population censuses are the most common source of information on the foreign-born population of a country, while statistics on the foreign population are derived from both censuses and population registers. Given the paucity of data on international migration flows, global migration trends have been analysed mostly on the basis of the size and characteristics of the migrant stock.

[a] See United Nations, Recommendations on Statistics of International Migration, Statistical Papers, Series M , No. 58, Rev.1 (1998).

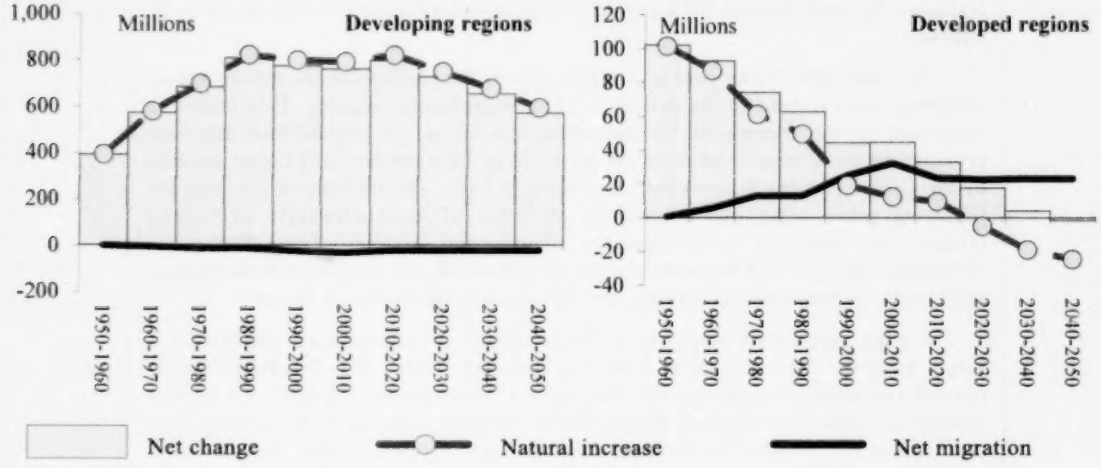
9. Although the total number of international migrants living in Europe has continued to increase, the decline over the past decade in the net inflow of persons

[5] United Nations, *World Population Prospects: the 2015 Revision*.

to the developed regions was due to a reduction in the level of net migration to Europe as a whole. Annual net inflows to Europe declined by more than half, from around 1.7 million between 2000 and 2010 to 0.8 million between 2010 and 2015. Meanwhile, annual net migration was stable for both Northern America (around 1.2 million) and Oceania (0.2 million). For Asia, the estimated net outflow fell from 1.9 million persons per annum between 2000 and 2010 to 1.3 million between 2010 and 2015; for Latin America and the Caribbean, negative net migration dropped by half between the same two time periods, from 0.8 to 0.4 million persons per year. Conversely, annual net outflows from Africa increased from around 0.3 million in the decade from 2000 and 2010 to 0.7 million between 2010 and 2015.

Figure

Contribution of natural increase and net migration to total population change by development group, from 1950-1960 to 2040-2050 (millions of persons per decade)



Source: Data from *World Population Prospects: the 2015 Revision*.

10. Between 1950 and 1990, the populations of both the developed and the developing regions grew primarily as a result of natural increase, owing to a consistent surplus of births over deaths (see figure). Since 1990, however, net migration has been the primary source of population growth for the developed regions as a whole. In the developing regions since 1990, the population has continued to grow because of a surplus of births over deaths, albeit at lower rates than in previous decades, while the impact of net migration on the total change has remained comparatively small.

11. In the developed regions, net immigration is expected to be the main driver of population growth between 2000 and 2020, and the sole driver of growth in later decades. From 2000 to 2030, population growth in the developing regions is expected to slow down owing to a decline in natural increase caused by a drop in the birth rate, with net migration continuing to play a minor role in overall population change.

12. By the decade from 2040 to 2050, population growth in the developed regions is projected to be negative, with positive net migration no longer compensating for the excess of deaths over births. For the developing regions, population growth is projected to continue as a result of natural increase, albeit at declining rates, with negative net migration still having a relatively small effect.

13. Because international migrants tend to be concentrated in the working ages, positive net migration can contribute to reducing the old-age dependency ratio, namely, the number of persons aged 65 years or older divided by the number aged 15 to 64 (see box 2). Under the medium variant of the United Nations population projections,[6] the old-age dependency ratio in the developed regions is projected to increase from 27 older persons per 100 working-age adults in 2015 to 46 per 100 in 2050. If net migration were zero between 2015 and 2050, the old-age dependency ratio of the developed regions in 2050 would be somewhat higher, at 50 per 100. By comparison to the medium-variant projection, with a scenario of zero net migration, the projected level of the old-age dependency ratio in 2050 would increase from 48 to 51 in Europe, from 38 to 43 in Northern America and from 30 to 34 in Oceania.

C. Ratification of international instruments

14. The international normative framework concerning international migration includes instruments to promote and protect the human rights of all persons. There are also specific instruments to promote and protect the rights of migrant workers and their families, to protect refugees and to combat migrant smuggling and human trafficking. As of 1 July 2016, instruments designed to protect refugees and to combat migrant smuggling and human trafficking had been ratified by more than three quarters of Member States.

15. The International Labour Organization (ILO) has adopted three instruments that are of direct relevance for the protection of migrant workers, namely, Convention No. 97 concerning Migration for Employment (Revised 1949); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Domestic Workers Convention, 2011 (No. 189).[7] In 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see General Assembly resolution 45/158) established international definitions for "migrant worker" and for categories of migrant workers, and formalized the responsibility of States in upholding the rights of migrant workers and members of their families. Overall, 92 countries had ratified at least one of the four instruments relevant to migrant workers as of 1 July 2016. Together those countries hosted 83 million international migrants in 2015, or 34 per cent of the global total.

16. The 1951 Convention and the 1967 Protocol relating to the Status of Refugees are the central instruments for refugee protection. The 1951 Convention specified the legal definition of "refugee", enumerated the rights of refugees, enshrined the practice of "non-refoulement", and established the legal obligation of States to protect refugees. The 148 States that have ratified either the 1951 Convention or the

[6] Ibid.

[7] Many domestic workers are international migrants, particularly migrant women; see International Labour Organization, *ILO global estimates on migrant workers: results and methodology* (Geneva, 2015).

1967 Protocol collectively hosted 9.6 million refugees in 2015, about half of the world's total.

17. As of 1 July 2016, 168 Member States had ratified the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[8] and 142 States had ratified the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air.[9] The rapid increase in the ratification of the human trafficking and migrant smuggling protocols may reflect a growing concern among Member States about the involvement of organized crime in irregular migration.

Box 2

Impact of migration on population ageing in Europe: projection scenarios

Population ageing, a long-term consequence of declining fertility and increased longevity, describes the shift in the population's distribution by age from younger to older ages, resulting in relatively greater proportions in the older age groups. While the process of population ageing is nearly universal, countries are at different stages in this transformation. Europe has the oldest population among the major regions of the world, and some countries in the region are experiencing negative natural growth owing to an excess of deaths over births.

For a given country and time period, the net migration rate is defined as the annual number of immigrants minus the number of emigrants divided by the total population. The first projection scenario assumes that the annual rate of net migration for the period from 2015 to 2050 will remain constant at four net migrants per 1,000 population; the second scenario, at two per 1,000; and the third scenario, at zero.

The estimated median age[a] of Europe's population in 2015 was 41.8 years. Assuming a constant net migration rate of four per 1,000, Europe's median age would increase to 43.8 in 2050. With a constant rate of two per 1,000, the median age in 2050 would increase even further to 45.1. The scenario with zero net migration would produce a median age of 47.3 in 2050. For the medium-variant projection, the assumption and results lie in between the last two scenarios.

In sum, although higher levels of positive net migration could moderate the upward shift in the age distribution, the impact under plausible scenarios is likely to be modest, and migration cannot be expected to halt or reverse the long-term trend towards population ageing. Nevertheless, for countries and regions that maintain a steady net inflow of migrants, the median age of the population and its old-age dependency ratio will be somewhat lower than they would be otherwise.

[a] The median age divides the population in two age groups of equal size, with as many persons having ages above the median as below.

[8] United Nations, *Treaty Series*, vol. 2237, No. 39574.

[9] Ibid., vol. 2241, No. 39574.

III. International migration and development at the United Nations

18. By acknowledging the important contributions of migration to the achievement of the Millennium Development Goals and by recognizing that human mobility is an enabler of sustainable development, the Second High-level Dialogue on International Migration and Development (see General Assembly resolution 68/4) paved the way for the inclusion of migration in the 2030 Agenda for Sustainable Development (see General Assembly resolution 70/1). With the adoption of the 2030 Agenda in 2015, international migration and its multidimensional relationship with development became an integral part of the United Nations development agenda. Member States have committed to strengthening international cooperation to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants, regardless of migration status, of refugees and of displaced persons. The Agenda recognizes the positive contributions of migration, migrants and mobility to inclusive growth and sustainable development, and provides a framework for addressing the root causes of displacement, including insecurity, conflict, persecution and lack of opportunity.

Box 3
Migration and the 2030 Agenda

(a) Sustainable Development Goals (target)

- Strengthen and retain health workforce in developing countries (3.c)
- Increase the number of scholarships for study abroad (4.b)
- Eradicate human trafficking (5.2, 8.7 and 16.2)
- Protect labour rights of migrant workers, in particular women migrants (8.8)
- Facilitate orderly, safe, regular and responsible migration (10.7)
- Reduce transaction costs of remittances (10.c)
- Ensure legal identity, including through birth registration (16.9)
- Disaggregate data by migratory status (17.18)

(b) Addis Ababa Action Agenda (paragraph)

- Mitigate negative impact on access to financial services of measures to counter money laundering and terrorism financing (24)
- Facilitate access to affordable financial services for migrants and their families (40)
- Promote cheaper, faster and safer transfer of remittances (40)
- Deliver quality education to migrant and refugee children (78)
- Ensure safe, orderly and regular migration, with full respect for human rights (111)
- Increase portability of earned benefits and mutual recognition of qualifications (111)
- Combat xenophobia and facilitate social integration of migrants (111)
- End human trafficking, in particular of women and children (112)

19. The Sustainable Development Goals include several targets directly related to migrants, migration and mobility (see box 3). Target 10.7, the only target devoted entirely to migration, calls on countries to facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. Other migration-related targets aim at retaining health workers in developing countries (3.c), providing scholarships for study abroad (4.b), ending human trafficking (5.2, 8.7, 16.2), respecting the labour rights of migrant workers, in particular women migrants (8.8), reducing the costs of transferring remittances (10.c) and providing legal identity for all (16.9). Disaggregation of data by migratory status (17.18) will be useful for identifying the particular vulnerabilities of migrants and ensuring inclusive development, a key feature of the 2030 Agenda expressed by the pledge that "no one will be left behind". Comparative analysis of the well-being of both native-born and foreign-born populations, or of populations of citizens and foreigners, will be critical in this regard.

20. The Addis Ababa Action Agenda (see General Assembly resolution 69/313, annex) seeks to implement the Sustainable Development Goals and targets. An integral part of the 2030 Agenda, the Addis agreement calls on countries to deliver quality education to all girls and boys, including migrant and refugee children, to combat xenophobia and to facilitate migrant integration (see box 3). The agreement also promotes cheaper, faster and safer transfer of remittances by fostering competition and transparency in the marketplace and seeks to enhance the productive use of remittances through greater financial inclusion and literacy. Further, the agreement urges Member States to lower recruitment costs for migrant workers and to facilitate the portability of earned benefits and the recognition of foreign qualifications, education and skills.

21. Recent crises associated with large movements of refugees and migrants have become a top priority for the United Nations. On 20 November 2015, the General Assembly considered the global awareness of the tragedies of irregular migrants in the Mediterranean basin. At that meeting, the Secretary-General offered a road map for responding to the challenges created by recent large movements of refugees and migrants. In response, Member States decided, on 22 December 2015, to convene a high-level meeting of the General Assembly on addressing large movements of refugees and migrants on 19 September 2016 (see General Assembly decision 70/539). The high-level meeting is now known also as the United Nations Summit for Refugees and Migrants.

IV. Implementing the 2030 Agenda: activities of the Global Migration Group and other stakeholders

22. The present section highlights some activities of members of the Global Migration Group[10] in implementing the outcome of the Second High-level Dialogue, as well as the 2030 Agenda. It also provides an overview of the recent activities of the Global Forum on Migration and Development and the Special Representative of the Secretary-General on International Migration and Development.

[10] See www.globalmigrationgroup.org/.

A. Protecting migrant rights and upholding refugee protection

23. Since the adoption of the Domestic Workers Convention in 2011, some 70 countries have taken action to advance decent work for domestic workers. The ILO and its partners have implemented a Global Action Programme on Migrant Domestic Workers, which has promoted the development of policy-oriented research and awareness-raising tools, supported migrant domestic workers' organizations and facilitated policy dialogue.

24. Women comprise slightly less than half of the world's international migrants.[11] The particular vulnerabilities of female migrants underscore the need for gender-sensitive migration policies and programmes, including for ensuring access to health-care services in humanitarian settings and for preventing gender-based violence and human trafficking and smuggling. For some women, migration can be a disempowering experience, especially when they are employed in unregulated sectors of the economy (see A/70/205). The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), is implementing a three-year project to strengthen the capacities of workers' organizations to promote human rights and labour standards for female migrant workers.

25. The Global Migration Group, chaired by UN-Women, organized an event focusing on empowering migrant women and girls in the context of the 2030 Agenda, held in the margins of the sixtieth session of the Commission on the Status of Women in March 2016. In its agreed conclusions, the Commission acknowledged the positive contributions of migrant women workers to inclusive growth and sustainable development and recognized that equal economic rights, economic empowerment and independence for women were essential for achieving the 2030 Agenda (see E/2016/27-E/CN.6/2016/22).

26. Older migrants are often affected by poor socioeconomic and health status, and by social isolation and exclusion. The Economic Commission for Europe (ECE) prepared a policy brief on the challenges faced by retired migrant workers and by caregivers for older migrants, focusing on social isolation and access to pensions and welfare.[12]

27. Migrants in irregular situations often face discrimination, exclusion, exploitation and abuse. OHCHR conducted a study on the economic, social and cultural rights of migrants in irregular situations and identified some of the barriers that often prevent those migrants from enjoying these rights, and highlighted several good practices.[13]

28. After reaching a country of first asylum, refugees and asylum seekers are often forced to move onward in search of protection and durable solutions. In the first four months of 2016, some 180,000 refugees and other migrants reached Europe by crossing the Mediterranean and Aegean seas. In response to the continued large flows of Syrian refugees, the Office of the United Nations High Commissioner for

[11] *Trends in International Migrant Stock* (see footnote 2 above).

[12] Economic Commission for Europe, "Migration and older age", Policy Brief on Ageing, No. 17 (July 2016).

[13] Available from www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf.

Refugees (UNHCR) has promoted an expansion of admission programmes for refugees and asylum seekers in third countries, including through resettlement, humanitarian visas, family reunification, private sponsorship and student and work visas. People in mixed migratory movements often use similar smuggling networks and precarious modes of travel. To ensure that asylum seekers and refugees are identified within these mixed flows, UNHCR promotes protection-sensitive procedures at international borders, and reception arrangements that avoid unwarranted restrictions on freedom of movement.[14]

29. The Office of the High Commissioner for Human Rights is developing principles and guidelines on the protection of all migrants in vulnerable situations and within the context of mixed migratory movements. The initiative addresses protection gaps experienced by migrants in vulnerable situations who do not have access to refugee protection. OHCHR has issued Guidelines on Human Rights and Human Trafficking for the protection of human rights at international borders.[15] While recognizing that States have legitimate interests to protect their national borders, States must respect, protect and fulfil the human rights of all migrants at their borders, regardless of their legal status, means of arrival or place of origin.

30. The United Nations Development Programme (UNDP) seeks to strengthen the resilience of host communities affected by large influxes of refugees and asylum seekers, and to increase the self-reliance of refugees. The 2016-2017 regional refugee and resilience plan promotes national leadership in planning and implementing the response to the Syrian refugee crisis in Jordan and Lebanon.

31. The United Nations Children's Fund (UNICEF) has reported that one in four asylum seekers in Europe in 2015 was a child, many of them unaccompanied or separated from their families.[16] UNICEF supports migrant and refugee children by establishing child-friendly centres and by providing child protection and other services. The United Nations Educational, Scientific and Cultural Organization (UNESCO) promotes access to quality education in the Syrian Arab Republic and in neighbouring countries hosting Syrian refugees.[17]

B. Designing well-managed migration policies

32. The Department of Economic and Social Affairs of the Secretariat and the International Organization for Migration (IOM) are developing indicators to measure the implementation of target 10.7, which calls on Member States to facilitate orderly, safe, regular and responsible migration and mobility. The selection of indicators is based on a migration governance framework that was welcomed by the IOM Council in 2015. IOM and the Economist Intelligence Unit have piloted a migration governance index in 15 countries.

33. A joint programme on labour migration, implemented by the Economic Commission for Africa (ECA), the African Union Commission, ILO and IOM,

[14] UNHCR, 10-Point Plan of Action on Refugee Protection and Mixed Migration (Geneva, 2006; revised version, January 2007).

[15] See www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

[16] United Nations Children's Fund, "Refugee and migrant crisis in Europe" (September 2015).

[17] United Nations Educational, Scientific and Cultural Organization, *Bridging Learning Gaps for Youth* (Paris, 2015).

promotes the development, adoption and implementation of coherent labour migration policies in Africa. The partnership seeks to facilitate the portability of social security, to promote the recognition of qualifications and to address skills shortages.

34. To prevent and combat the human trafficking and smuggling of migrants, the United Nations Office on Drugs and Crime (UNODC) supports Member States' efforts to cooperate across borders and coordinate their actions through legislative support and technical assistance. Since early 2015, UNODC has assisted over 65 countries and provided specialized training to more than 1,300 criminal justice practitioners and government officials.

35. To ensure migrants' rights to health, the World Health Organization (WHO) supports Member States in developing universal health coverage and equitable access to quality health services for all persons, including migrants. At a meeting on refugee and migrant health held in Italy in November 2015, European countries agreed to prepare a common framework to improve refugee and migrant health in the region.

36. Local governments play a critical role in implementing migration policies. The second annual Mayoral Forum on Mobility, Migration and Development, supported by the United Nations Institute for Training and Research (UNITAR) and its partners, adopted an agenda for cities to assist in achieving the migration-relevant targets of the Sustainable Development Goals.[18]

37. The Economic and Social Commission for Asia and the Pacific (ESCAP) is carrying out a project to promote well-managed migration policies in North and Central Asia. The project aims to build knowledge and to facilitate cooperation and partnerships between countries of origin and destination.

38. The Inter-Parliamentary Union, in collaboration with ILO and OHCHR, published a handbook to assist parliamentarians in the design and promotion of laws and policies to promote the human rights of migrants and to strengthen migration governance.[19]

39. In 2014, the Governments of the Philippines and the United States of America launched the Migrants in Countries in Crisis Initiative to assist international migrants who are stranded in host countries as a result of conflict or natural disaster. As part of this State-led initiative, guidelines have been prepared to assist countries, the private sector, international organizations and civil society to respond in such situations.[20] Other governments have joined the initiative, which is also supported by IOM, UNHCR, the Special Representative of the Secretary-General and Georgetown University.

[18] See www.unitar.org/dcp/sites/unitar.org.dcp/files/uploads/quito_outcome_document_en.pdf.

[19] Inter-Parliamentary Union, ILO and OHCHR, *Migration, human rights and governance: Handbook for Parliamentarians No. 24*, 2015.

[20] International Organization for Migration, Guidelines to protect migrants in countries experiencing conflict or natural disaster (Geneva, June 2016).

C. Leveraging migration for development

40. The United Nations Development Programme and IOM are implementing a joint programme to mainstream migration in national development plans and strategies, including as part of the United Nations Development Assistance Framework. The programme is seeking to establish a coherent United Nations approach to migration and development in Bangladesh, Ecuador, Jamaica, Kyrgyzstan, Morocco, the Republic of Moldova, Serbia and Tunisia.

41. In cooperation with various partners, UNDP implements the Joint Migration and Development Initiative of the European Commission and the United Nations, which aims to strengthen the role of local governments, migrants and other actors in developing migration and development policies as part of local development planning.

42. Officially recorded remittances to developing countries in 2015 amounted to $431.6 billion.[21] The global average cost of sending remittances was around 7.5 per cent in late 2015 and early 2016.[22] With an average cost of 9.7 per cent, Sub-Saharan Africa was the region with the highest remittance transfer fees.

43. By linking remittances to financial services such as savings, loans and insurance, financial inclusion can become an important tool to maximize the development impact of remittances. The United Nations Conference on Trade and Development (UNCTAD) organizes expert meetings on financial inclusion and supports greater use of digital financial services. The International Fund for Agricultural Development (IFAD), together with the World Bank and the European Union, has organized global forums on remittances and development, bringing together representatives of the private and public sectors, and from civil society. The forums highlight the importance of financial inclusion, the use of innovations and technology to reduce transaction costs, and the role of diaspora investments in creating employment opportunities.[23]

44. In 2015, the 176 States members of the Governing Council of IFAD unanimously proclaimed 16 June the International Day of Family Remittances. The Day aims to recognize the fundamental contribution of earnings by migrant workers to their families and communities back home and to the sustainable development of their countries of origin.

45. In May 2015, the Global Migration Group organized a meeting on harnessing the contributions to sustainable development of migrant remittances and diaspora populations in general. Participants presented data and research on the social and economic value of lowering recruitment costs and remittance transfer fees.

46. The Economic and Social Commission for Asia and the Pacific (ESCAP), along with its partners in the Asia-Pacific Regional Thematic Working Group on International Migration, including Human Trafficking, produced a report on the contributions of migrants to development in countries of origin and destination.[24]

[21] World Bank Group, Migration and development brief 26 (Washington D.C., April 2016).
[22] World Bank, Remittances prices worldwide, Issue No. 17 (Washington D.C., March 2016).
[23] Global Forum on Remittances and Development, Milan, Italy, 16-19 June 2015.
[24] Economic and Social Commission for Asia and the Pacific, *Asia-Pacific Migration Report 2015*: migrants' contributions to development (Bangkok, 2016).

47. In 2015, the Food and Agriculture Organization of the United Nations (FAO) initiated a project on migration, food security and rural poverty reduction in Ethiopia and Tunisia. The project seeks to address the root causes of involuntary migration and to promote youth employment in rural areas. FAO is strengthening partnerships with various actors to integrate migration into agricultural and rural development policies and programmes, and to foster the productive investment of remittances in rural areas.

D. Improving migration data and research

48. The Department of Economic and Social Affairs and IOM presented a draft Global Migration Group handbook on migration and development data at the annual meeting of the Global Forum on Migration and Development in Istanbul in October 2015. The handbook is scheduled for publication in late 2016 with support from the Global Knowledge Partnership on Migration and Development (KNOMAD).

49. The Population Division and the Statistics Division of the Department of Economic and Social Affairs organized a regional workshop on the production and use of international migration data for development in Dakar, Senegal, in September 2015. The workshop aimed to strengthen the technical capacity of national officials to produce and analyse migration data, to improve the use of migration data for policy formulation, and to increase awareness about the migration-related targets of the 2030 Agenda. In follow-up to the workshop, the Department and IOM have agreed to collaborate on improving migration data in Western Africa through workshops, country-specific training, and the promotion of international standards for data collection and dissemination.

50. The Economic Commission for Europe (ECE) has promoted the harmonization of migration concepts and definitions as well as the exchange of migration data, developed new methodologies for measuring emerging migration patterns, and improved the measurement of the impact of migration in the region. It has also started to develop a common statistical definition of circular migration, guidelines for measuring labour mobility, and guidance for integrating migration data from multiple sources.

51. The United Nations Population Fund (UNFPA) has invested in the collection, analysis, utilization and sharing of migration data, including data disaggregated by age and sex, and has promoted a better understanding of the relationship between demographic change, migration and socioeconomic development. Sponsored by KNOMAD, UNFPA coordinated a review of the migration assumptions used in population projections.[25]

52. In 2015, the Economic and Social Commission for Western Asia (ESCWA) prepared a report on international migration providing a comprehensive overview of contemporary migration trends and their economic and social consequences in Western Asia. The report focuses on the nexus between migration, displacement and development, and includes recommendations to address the challenges faced by migrants and refugees and to maximize the benefits of migration.

[25] Thomas Buettner and Rainer Muenz, *Comparative Analysis of International Migration in Population Projections*, KNOMAD Working Paper 10 (March, 2016).

E. Strengthening cooperation and partnerships

53. Both before and during 2015, the Global Migration Group, in collaboration with the Global Forum on Migration and Development and the Special Representative of the Secretary-General on International Migration and Development, continued to advocate for the inclusion of migration in the 2030 Agenda for Sustainable Development, including the Addis Ababa Action Agenda. In June 2015, the first joint event held by the Group, the Forum and the Group of 20 was organized to explore the role of migration, remittances and diaspora in financing for development. The Group has also organized a series of interactive, multi-stakeholder meetings in preparation for the United Nations Summit for Refugees and Migrants.

54. In February 2015, the coordination meeting on international migration, convened annually by the Population Division of the Department of Economic and Social Affairs, considered progress in integrating migration into the 2030 Agenda, and ways to leverage migration within the new framework on financing for development. It also focused on the follow-up to the Second High-level Dialogue on International Migration and Development. In February 2016, the coordination meeting addressed progress in measuring and implementing the migration-related commitments of the 2030 Agenda, and reviewed the preparations for the forthcoming Summit in September 2016.

55. The Special Representative of the Secretary-General on International Migration and Development is planning to issue a report in late 2016 that will discuss how international cooperation in the field of migration can be improved — in particular, how the most vulnerable migrants can be protected. It will also examine how the 2030 Agenda can be implemented to benefit countries of origin and destination as well as migrants and their families.

56. The eighth annual meeting of the Global Forum on Migration and Development, convened by the Turkish Chair in October 2015, focused on human mobility for sustainable development. The Forum discussed the need for international cooperation and responsibility-sharing in responding to forcibly displaced populations. Bridging the gap between humanitarian and development cooperation was highlighted as requiring urgent attention. The Forum established a working group to study its contribution to the implementation, review and follow-up of the Sustainable Development Goals.

57. The Economic and Social Commission for Western Asia (ESCWA) participated in several regional and international forums on migration, including the Abu Dhabi Dialogue and the Arab regional consultative process on migration. The Working Group on International Migration in the Arab Region, co-chaired by ESCWA, the League of Arab States and IOM, fostered collaboration and promoted joint research on migration. With the support of IOM and the League, the Arab regional consultative process served as a platform to enhance understanding and cooperation on migration issues for 22 Arab States.

V. The Third High-level Dialogue and beyond: proposals on modalities and linkages to other bodies and processes

58. In resolution 69/229, the General Assembly decided to: (a) hold the Third High-level Dialogue on International Migration and Development by no later than 2019; (b) hold future dialogues at regular intervals; and (c) establish the date and modalities of the Third High-level Dialogue and determine the periodicity of future dialogues at its seventy-first session, taking into account alignment with all relevant United Nations development review processes.

A. Purpose and periodicity of future dialogues

59. Future dialogues could play a key role in the thematic review of the 2030 Agenda, serving as a central platform for assessing progress towards the achievement of the migration-related Goals and targets and towards the implementation of other relevant commitments, including those of the Addis Ababa Action Agenda (see box 3). Such reviews would be informed by a robust evidence base that includes the global indicators being developed currently under the auspices of the United Nations Statistical Commission. The contribution of future dialogues would be complemented by reviews by the functional commissions of the Economic and Social Council, including the Commission on Population and Development, and other intergovernmental bodies and forums (see General Assembly resolution 70/1, para. 85), such as the Global Forum on Migration and Development, in the light of the call by Member States for coherence of the General Assembly, the Economic and Social Council and other intergovernmental bodies and forums with the work of the high-level political forum towards the follow-up and review of the implementation of the 2030 Agenda (see General Assembly resolution 70/299, para. 15).

60. Given that the first four-year cycle of the high-level political forum will conclude in 2019, when the forum will convene under the auspices of the General Assembly, it may be desirable to hold the Third High-level Dialogue in 2018 or early 2019, so that the Dialogue's outcome could be taken into account in the preparations for the forum in 2019, which will review target 10.7 in considering the theme "Empowering people and ensuring inclusiveness and equality" (ibid., para. 3 (c)). If 2018 were chosen, future dialogues could take place on a quadrennial basis, during the third year of the forum's four-year cycle. This timing may be optimal for contributing to the review of the 2030 Agenda. Future dialogues could also serve as a central platform for following up on the 2016 Summit for Refugees and Migrants.

B. Relationship with the intergovernmental conference in 2018

61. In his report prepared for the Summit to be held on 19 September 2016 (see A/70/59), the Secretary-General called on Member States to develop a global compact for safe, regular and orderly migration, to be adopted at an intergovernmental conference on international migration in 2018, which was agreed upon by Member States on 2 August 2016. In addition to the review of the 2030 Agenda and the follow-up to previous high-level dialogues and the 2016

Summit, future dialogues could review the implementation of the global compact, if such an agreement were adopted at the conference.

62. An important decision concerns the timing of the Third High-level Dialogue in relation to the conference, and the possible role of the Dialogue in contributing to the preparations for the conference. It is worthwhile to consider three possible scenarios. In the first scenario, the Dialogue would take place before the conference, possibly in late 2017 or early 2018, and could contribute to the preparations for the conference, which might take place in the second half of 2018. In the second scenario, the Dialogue would take place after the conference, possibly in 2019, and could initiate the follow-up process for the conference. In the third scenario, the Dialogue and the conference would be merged to become a single event or two consecutive and coordinated events.

63. Although each scenario has its own merits, the second scenario is perhaps the most difficult to justify, as Member States may not support another high-level meeting on international migration in the year following a major conference on the topic. One advantage of the third scenario is that it may reduce the total cost of the two events. An advantage of the first scenario is that it would offer an opportunity to establish, sooner and with greater focus, the role of the high-level dialogue process in the follow up of the 2030 Agenda, while also providing an avenue to contribute to the preparations for the conference. Under the first scenario, a role of the Economic and Social Council may be envisioned by holding, for instance, the dialogue in tandem with the fifty-first session of the Commission on Population and Development. Given that one high-level meeting may not be sufficient for preparing an intergovernmental conference, any contribution of the Third High-level Dialogue to the preparation of the conference would be partial.

C. Duration and format of the plenary meetings

64. Previous high-level dialogues in 2006 and 2013 have been two-day events with four plenary meetings. In both cases, four round-table meetings were held concurrently with the plenary meetings, featuring interactive discussions and multi-stakeholder panels.

65. For the first or second scenario, mentioned above, the General Assembly may wish to adopt a similar structure for the Third High-level Dialogue, with plenary meetings on two consecutive days from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. The number of round-table meetings could be adjusted according to the desired thematic content of the Dialogue. In the first scenario, for example, the review of the 2030 agenda and the follow-up to the Second High-level Dialogue and the 2016 Summit could be the subject of three round tables, with an additional round table devoted to the preparation of the conference in 2018.

66. The opening could include statements delivered by the President of the General Assembly, the Secretary-General, the President of the Economic and Social Council and the Director General of the International Organization for Migration. The meeting could also feature presentations by an eminent person working in the field of migration and development, a representative of civil society and a migrant.

67. In addition to Member States and observers, the General Assembly could invite the participation of the heads of relevant United Nations agencies, funds and

programmes as well as the relevant special advisers, representatives and rapporteurs. Representatives from major groups of stakeholders — for example, migrants, non-governmental organizations in consultative status with the Economic and Social Council, other civil society organizations and the private sector — could be included, time permitting, in the list of speakers for the plenary meetings.

68. Under the third scenario, the nature of the Third High-level Dialogue would be fundamentally different and should be addressed in a discussion on the modalities of the conference.

D. Structure, format and themes of the interactive round-table meetings

69. For the first or second scenarios, the first round table of the Third High-level Dialogue could take stock of the implementation of the Declaration of the Second High-level Dialogue, in accordance with paragraph 32 of General Assembly resolution 69/229. The second round table could be dedicated to a review of progress in achieving the migration-related Goals and targets of the 2030 Agenda and implementing other relevant commitments, including the Addis Ababa agreement, whereas the third round table could consider the implementation of the commitments made at the Summit in 2016. The fourth round table could focus on the preparations for the intergovernmental conference on international migration in 2018 in the first scenario, or on the follow-up to the conference in the second scenario.

70. The chairs of the round tables could be designated by the President of the General Assembly, in consultation with the regional groups and other stakeholders, from among ministers who commit to attending the Dialogue, with due regard for geographical representation and gender balance. Summaries of the deliberations of the round-table meetings could be presented orally by the round-table chairs at the concluding plenary meeting.

71. Participation in the round-table meetings could be open to representatives of relevant entities of the United Nations system and other institutional stakeholders, including from civil society and the private sector. The General Assembly may wish to make specific provisions to provide speaking roles in the round-table meetings for heads of entities of the United Nations system and selected representatives of civil society and the private sector.

E. Contributions from civil society

72. The General Assembly may wish to organize informal interactive hearings with representatives of civil society prior to the Third High-level Dialogue. The hearings could take place over the course of one full day. The President of the General Assembly would preside over the hearings, which could be open to representatives of accredited non-governmental organizations, other civil society organizations, the private sector, Member States and observers of the General Assembly. The Assembly may wish to entrust the President with determining the list of invited participants and the format and organization of the hearings, in consultation with Member States and other relevant stakeholders.

73. The President of the General Assembly could be tasked with preparing and disseminating a summary of the hearings prior to the Third High-level Dialogue. In order to facilitate the participation in the hearings by civil society organizations from developing countries, the General Assembly may wish to urge Member States and others to make voluntary contributions to support this activity. The Assembly may wish to recommend that other preparatory activities, such as panel discussions or expert meetings, be organized with support from interested Member States, relevant entities of the United Nations system or other institutional stakeholders.

F. Outcome

74. The report of the Secretary-General on international migration and development for the seventy-third session of the General Assembly could include a summary of the Third High-level Dialogue, including its preparatory events and deliberations (see A/69/207). In addition, the Assembly may wish to call for an action-oriented outcome document and entrust the President with producing a draft text based on inputs from Member States, convening informal consultations at an appropriate date to allow sufficient consideration and facilitate agreement by Member States prior to the Dialogue.

VI. Recommendations

75. **Regarding international cooperation on migration and development:**

(a) **In view of the inclusion of migration and related topics in the Sustainable Development Goals, the relevant entities of the United Nations system should continue to support developing countries in integrating migration into national development planning;**

(b) **The collection and analysis of data on migration and related topics, and the use of such data to support the formulation of evidence-based policies, should receive high priority. National efforts by developing countries should be supported by international cooperation through technical and financial assistance;**

(c) **The Global Migration Group should further coordinate and strengthen its activities in support of Member States in implementing the 2030 Agenda for Sustainable Development and the outcome of the Second High-level Dialogue in 2013. In particular, the Group should support countries in collecting and using migration-related indicators to assess their progress in achieving the relevant Goals and targets.**

76. **Regarding future high-level dialogues on international migration and development:**

(a) **Future dialogues should serve as a central platform at the United Nations for reviewing progress and assessing the implementation of the migration-related commitments of the 2030 Agenda . They may also play a role in reviewing the commitments made at the Summit for Refugees and Migrants in 2016;**

(b) The General Assembly should consider holding future high-level dialogues on a quadrennial basis, possibly in the third year of the four-year cycle of the High-level Political Forum on Sustainable Development, starting in 2018.

77. **Regarding the relationship between future high-level dialogues and the intergovernmental conference on international migration in 2018:**

(a) The General Assembly should weigh the pros and cons of different scenarios regarding the timing and scope of the Third High-level Dialogue in relation to the conference, including scenarios where the Dialogue occurs before and contributes to the preparations for the conference, or where the Dialogue occurs after and initiates the follow-up process, or where the conference and the Dialogue are merged to become a single event or two consecutive and coordinated events;

(b) Future high-level dialogues should provide a consolidated, quadrennial assessment of the implementation of the outcome(s) of the conference in 2018, in addition to their role in the follow-up and review of the 2030 Agenda, the Summit in 2016 and earlier high-level dialogues.

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Report of the Working Group of Experts on People of African Descent

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group of Experts on People of African Descent, pursuant to paragraph 8 of Assembly resolution 70/140 and paragraph 4 of Human Rights Council resolution 27/25.

* A/71/50.

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Report of the Working Group of Experts on People of African Descent

Summary

The present report is submitted in accordance with General Assembly resolution 70/140, paragraph 8, and Human Rights Council resolution 27/25, paragraph 4, in which the Working Group of Experts on People of African Descent was requested to submit an annual report to the Council on all activities relating to its mandate, as well as to the Assembly in the context of the International Decade for People of African Descent. The present report covers activities undertaken during the period from 1 July 2015 to 30 June 2016.

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I. Introduction

1. The present report is prepared in accordance with paragraph 8 of General Assembly resolution 70/140, by which the Assembly requested the Human Rights Council, through the Chair of the Working Group of Experts on People of African Descent, to submit a report on the work of the Working Group to the Assembly. By paragraph 4 of its resolution 27/25, the Council requested the Working Group to submit an annual report to the Council on all activities relating to its mandate, as well as to the Assembly in the context of the International Decade for People of African Descent. The time period covered by the report is from 1 July 2015 to 30 June 2016.

2. In accordance with its mandate, the Working Group has continued to monitor the human rights situation of people of African descent worldwide. The Working Group is deeply concerned by the escalation of racism, racial discrimination, Afrophobia, racist hate speech, xenophobia and related intolerance targeting Africans and people of African descent in many parts of the world. In particular, the Working Group condemns police violence and other forms of violence against people of African descent.

3. During the period under review, a new member of the Working Group was appointed by the Council from the Latin American and the Caribbean region. Verene Shepherd (Jamaica) completed her term as a member of the Working Group at the end of November 2015, and her successor, Ahmed Reid (Jamaica), was appointed in December 2015. The current five mandate holders serving as experts in the Working Group are Ricardo A. Sunga III (Philippines), Mireille Fanon-Mendes-France (France), Sabelo Gumedze (South Africa), Michal Balcerzak (Poland) and Ahmed Reid (Jamaica). In April 2016, at the eighteenth session of the Working Group, Mr. Sunga III was appointed as the new Chair of the Working Group, replacing Ms. Fanon-Mendes-France.

II. Activities of the Working Group of Experts on People of African Descent

A. Annual meetings

Seventeenth session (23-27 November 2015)

4. The seventeenth session (23-27 November 2015) was a closed session, in which the Working Group considered internal matters including planning future work, sessions, country visits and communications, and held consultations with various stakeholders, including Governments, civil society and the Office of the United Nations High Commissioner for Human Rights (OHCHR). One of the decisions taken during the session was to increase the Working Group's engagement with financial and development institutions with a view to contributing to development programmes intended for people of African descent. In this regard, missions were planned for 2016.

Eighteenth session (11-15 April 2016)

5. At its eighteenth session (11-15 April 2016), the Working Group focused on the interlinkages between the themes of the International Decade (2015-2024), namely: recognition, justice and development. Since the Working Group had devoted its previous three annual thematic sessions to the themes of the International Decade, it decided to devote its eighteenth session to exploring the interlinkages between them and to deepening the understanding of stakeholders about the importance of the interconnectedness of the themes. During the session, the Working Group discussed how policies, actions and programmes of development were affected by structural and institutional racism, racial discrimination, Afrophobia, xenophobia and related intolerance towards Africans and people of African descent. It emphasized that measures to eliminate poverty and all forms of racial discrimination must be mutually reinforcing. The Working Group urged States to establish programmes based on the participation of Africans and people of African descent, aimed at improving their economic and social conditions. It also reiterated its recommendation to devoting special attention to the needs of people of African descent, inter alia, through the preparation of specific programmes of action, in cooperation with civil society, in order to implement the programme of activities for the International Decade for People of African Descent; establish an international forum for people of African descent; and start work on a draft United Nations declaration on the promotion of and full respect for the human rights of people of African descent. In addition, a special session was devoted to the fifteenth anniversary of the Durban Declaration and Programme of Action. Another special session was devoted to discussing the Working Group's research on the stereotyping of blackface. A full account of the sessions and recommendations made by the Working Group is contained in its annual report submitted to the Council at its thirty-third session (A/HRC/33/61).

B. Country visits

United States of America

6. The Working Group undertook a country visit to the United States of America from 19 to 29 January 2016.[1] A full account of the findings and recommendations made by the Working Group are contained in its report submitted to the thirty-third session of the Council.

Canada

7. The Working Group will visit Canada from 17 to 21 October 2016. A statement to the press will be delivered by the Working Group at the end of its mission and will then be made available on its website. The Working Group will submit a report containing its findings and recommendations to the Council in September 2017.

[1] The statement to the press delivered by the Working Group at the end of their mission is available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000&LangID=E.

Other pending visits

8. The Government of Israel invited the Working Group to visit Israel in 2015. The Working Group proposed that the visit take place from 13 to 17 December 2015; however, those dates were not confirmed by the Government of Israel.

9. The Government of Jamaica also extended an invitation for the Working Group to visit the country in 2016. The Working Group proposed that the visit take place from 11 to 15 July 2016; however, those dates were not confirmed by the Government of Jamaica.

10. The Working Group expresses its appreciation to all the Governments that have cooperated with the mandate and that have invited it to undertake country visits. The Working Group has requested undertaking visits to other countries in accordance with its mandate and emphasizes the importance of Governments cooperating with it in confirming dates and allowing visits to be planned and to proceed on schedule.

C. Communications

11. During the reporting period, and in accordance with its mandate, the Working Group sent four communications to the following regarding allegations of human rights violations: Colombia, Guyana and the United States.

12. The communications sent and replies received are included in the following joint communications reports by special procedures mandate holders submitted to the Council: A/HRC/33/32, A/HRC/32/53 and A/HRC/31/79. These periodic reports include brief summaries of allegations communicated to States or other entities, as well as hyperlinks to the texts of the communications sent and responses received.

13. The Working Group also issued a number of statements to the press during the reporting period.

14. On 13 June 2016, the Working Group issued a statement expressing alarm over the increasing number of reports that it had received on violence towards people of African descent in Colombia. The statement was also endorsed by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on minority issues, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

15. On 21 April 2016, the Working Group issued a statement expressing its concern about the serious consequences of national and international drug policies on people of African descent.

16. On 17 March 2016, the International Day for the Elimination of Racial Discrimination, the Working Group, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Committee on the Elimination of Racial Discrimination issued a joint statement. In the statement, they emphasized that, over the 15 years since the convening of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, very little progress had been made in tackling racism, Afrophobia, racial discrimination, xenophobia and related intolerance. There had instead been an alarming increase in hate speech and xenophobic actions around the world.

17. On 3 March 2016, the Working Group joined several mandate holders to call upon the United States to increase its efforts to address environmental threats to human rights, amid the recent outrage over lead-contaminated water in the town of Flint, Michigan, while reiterating the recommendations they had made during the Working Group's visit to the country.

18. On 29 December 2015, in a statement to the press, the Working Group indicated that international efforts to tackle climate change needed to be more inclusive and involve those largely overlooked during the United Nations Climate Change Conference held in Paris in December 2015.

19. On 9 December 2015, the Working Group joined several mandate holders in issuing a statement calling for the full ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

20. On 28 July 2015, the Working Group issued a statement in which it expressed its concerns over fears of arbitrary deportation and racial profiling of people of Haitian descent in the Dominican Republic.

D. Liaising with financial and developmental institutional and operational programmes and specialized agencies of the United Nations, with a view to contributing to the development programmes intended for people of African descent

21. In the exercise of its mandate and specific activities provided for in Council resolution 9/14, paragraph 8 (f) (i), the Working Group undertook an initial visit to Washington, D.C., on 27 and 28 June 2016. The delegation comprised the following members of the Working Group: Mr. Reid and Mr. Balcerzak. The delegation met with representatives from the World Bank Group, the Inter-American Development Bank and the Nordic Trust Fund. It also met with relevant members of staff from the Inter-American Commission on Human Rights.

22. During the mission, the delegation explored ways in which the Working Group could effectively contribute to development programmes intended for people of African descent. Another aim was to find out if, and to what extent, the financial institutions already had programmes for people of African descent and if any specific work was under way in the context of the programme of activities to implement the International Decade for People of African Descent. The delegation also inquired about the potential ways of obtaining financial support for activities relating to the mandate of the Working Group.

23. At the World Bank Group, the delegation discussed the aims of its mission with those involved in drafting and implementing specific projects and with those in charge of staff member clubs of the World Bank Group interested in the activities of the Working Group. The Working Group learned of important and innovative initiatives, such as Digital Jam 3.0 and KingstOOn, taking place in the Caribbean. The delegation hoped that the initiatives would be replicated throughout the African diaspora. The delegation expressed its appreciation of the various activities undertaken at the World Bank and the Nordic Trust Fund which took into account a human rights perspective. However, the delegation also noted that awareness of the International Decade and its aims at the World Bank Group seemed to be rather

limited. It was agreed that some action in that area was necessary, in cooperation with the Working Group and the internal groups at the World Bank, with a view to promoting the aims of the Decade.

24. At the Inter-American Development Bank, the delegation discussed ways of possible cooperation and sharing of experiences in promoting visibility and development policies aimed at improving the well-being of people of African descent in Latin America and the Caribbean region. The Working Group noted the efforts of the Inter-American Development Bank in collecting disaggregated data on people of African descent and in organizing projects that promoted development with the identity of indigenous people and people of African descent at its core.

25. The Working Group also planned to undertake a mission to meet with representatives of operational programmes and specialized agencies of the United Nations system and to continue to explore ways in which it could make proposals and contribute to development programmes intended to benefit people of African descent.

E. Thematic research combating racial stereotypes

26. During the period under review, the Working Group began thematic research on the issue of racial stereotyping of people of African descent, as an area of work for continued efforts to combat negative racial stereotypes.

27. The Working Group studied racial stereotypes faced by people of African descent around the world including the role of blackface in public events, such as Black Pete in the Sinterklaas festival in the Netherlands, and the prevalence of such racial stereotypes in the media and advertisements.

28. The blackface phenomenon, which portrays people of African descent in a negative light, remains a global concern. It dehumanizes people of African descent and attacks their dignity and rights. The contemporary manifestation of blackface is indicative of the increasing prevalence of racial stereotypes. Among other things, it is a product of past inhumane practices such as enslavement, colonialism and apartheid. It was perpetrated by Jim Crow and nurtured by those who refused to acknowledge that people of African descent were victims of slavery, the slave trade, colonialism and apartheid.

29. Racial stereotyping of people of African descent is taking place around the world and must be addressed as an unacceptable phenomenon. Stereotypes are the result of limited knowledge, misinterpretations, shortcomings of education and the negative portrayal of people of African descent in the media and works of art. For example, people of African descent are rarely present in films, and when they are present have secondary or supporting roles only.

30. Ignorance of the world and of Africans does not help efforts to address the matter of stereotyping. There is a failure to consider the African perspective and a lack of an awareness of the African contribution to society. A purist attitude prevents a more inclusive society that is open to diversity. A history of colonization has also introduced values that do not take into account the African view of the world. Global media in its pervasiveness has reinforced such values, which give little importance to African characteristics.

31. Stereotyping and hate speech must be dealt with by law in a similar manner. Hate speech attacks a person on the basis of race or another attribute. Criminal sanctions must be imposed not just for hate speech but also for stereotyping. Furthermore, like hate speech, stereotyping ought to provide a basis for damages. Administrative sanctions should also be imposed for words and images that amount not only to hate speech but also to stereotyping.

F. International Decade for People of African Descent

32. The Working Group continued to campaign for effective implementation of the programme of activities of the International Decade.

33. During the period under review, the Working Group continued to actively promote and participate in various activities, interacting with civil society and assisting stakeholders in implementing the programme of activities of the International Decade. The following actions by the Working Group are of particular note:

(a) During the Working Group's country visit to the United States, the International Decade was actively promoted and all stakeholders were encouraged to take action at the national level;

(b) During its eighteenth session in Geneva, the Working Group focused on the interlinkages of the themes of the International Decade. A panel discussion was held on plans for the programme of activities to implement the International Decade.

34. Individual members of the Working Group also carried out the following promotional activities:

(a) Ms. Fanon-Mendes-France delivered several statements, and participated in a range of events, using the opportunity to raise awareness and call for the implementation of the International Decade. On 3 and 4 December 2015, Ms. Fanon-Mendes-France, as Chair of the Working Group, delivered a statement at, and participated in, the regional meeting of the International Decade for People of African Descent for Latin America and the Caribbean, held in Brasilia. During the period under review, Ms. Fanon-Mendes-France also participated in events organized by States, civil society and universities around the world, including AfroMadrid in Madrid; an Africités meeting in Johannesburg, South Africa; an event in Strasbourg, France, where she met with member States of the European Commission against Racism and Intolerance; an event in Washington, D.C., where she briefed members of the Congressional Black Caucus; an event in Paris during Black History Month; and events at Harvard University and the University of Connecticut, United States;

(b) During her interventions, Ms. Fanon-Mendes-France focused on the importance of historicizing the implementation of the pseudo-concept of race as a means to classify and categorize human society in order to deconstruct the concept. She also reiterated the importance of deconstructing the coloniality of power and of knowledge as a means of building a non-discriminatory and equal society, and of understanding how structural and institutional racism and Afrophobia continued to be present in society and how to tackle them. She also emphasized the importance of reparatory justice with regard to the transatlantic slave trade, enslavement,

colonization and colonialism as the only means of tackling the consequences of those crimes against humanity experienced, even today, by Africans and people of African descent all over the world. She reiterated, in various ways, the importance of referring to the Working Group mandate within the framework of the Durban Declaration and Programme of Action;

(c) In 2015, Ms. Shepherd delivered three lectures about the International Decade and its relationship to the issue of reparatory justice: (i) "From Montego Bay to Morant Bay: making the case for reparatory justice" (Mandeville, Jamaica, 26 July 2015); (ii) "The decade for people of African descent and reparatory justice" (University of St. Martin, Sint Maarten, 3 October 2015); and (iii) a keynote address "Past imperfect, future perfect (?): reparation, rehabilitation, reconciliation" (University of Edinburgh, United Kingdom of Great Britain and Northern Ireland, 4 November 2015);

(d) On 29 April 2016, Mr. Reid was a panellist at a United Nations special event held in New York on the theme "Recognition, justice and development: women of African descent — at the intersection of race and gender".

G. Other mandate-related activities

35. On 15 June 2016, Mr. Sunga III, presented a paper on people of African descent in Asia at a round-table discussion at the Institute of Human Rights at the University of the Philippines. The paper was entitled "Bridging the racial divide: contemporary issues of discrimination". Issues of racism, racial discrimination, xenophobia, Afrophobia and related intolerance against people of African descent in Asia were highlighted in the paper. Mr. Sunga III also indicated in the paper that steps would be taken to urge the Philippines and other Asian States to adopt positive measures to implement the International Decade in the region in accordance with its themes of recognition, justice and development.

36. On 18 March 2016, at the invitation of the President of the General Assembly, Mr. Reid delivered the keynote address on the occasion of the International Day for the Elimination of Racial Discrimination at United Nations Headquarters in New York. Also on 18 March 2016, in celebration of the same occasion and at the invitation of the President of the Human Rights Council, Ms. Fanon-Mendes-France delivered a statement at the United Nations Office at Geneva. The theme for both events was "Challenges and achievements of the Durban Declaration and Platform for Action — 15 years after". In her statement, Ms. Fanon-Mendes-France focused on the importance of ending the structural and institutional racism that plagues the world, by going back to the founding idea of the Charter of the United Nations that created the United Nations. She emphasized that it was the people who were sovereign in the framework of the United Nations and that States were there only to represent the people. She insisted on the importance of deconstructing the paradigms of political domination and of knowledge that allowed the enslavement of millions of human beings, and created divides in society, such as "good" versus "evil", "civilized people" versus "barbarians", "democracy" versus "dictatorship", and raised an elementary and simplistic analysis of international relations.

37. On 11 and 12 October 2015, Mr. Balcerzak participated in the Tenth Annual Symposium: Human Rights and a Just Society, held in Torun, Poland, on the theme "The world is on fire: fleeing to freedom or survival", organized by the Law Faculty

of Nicolaus Copernicus University and John Felice Rome Center, Loyola University, Chicago, United States. The event gathered together students and academics from both organizing institutions. Mr. Balcerzak gave a presentation on the activities of the Working Group, in particular in the context of its country visit to Italy in June 2015.

38. On 31 October 2015, Mr. Balcerzak participated in a meeting with representatives of the Society of African Students, held at Turgut Özal University, Ankara, Turkey. The meeting was a side event of the conference on international law and domestic policies organized by the university. Mr. Balcerzak presented and discussed the activities of the Working Group and informed them about the aims of the International Decade.

39. Mr. Balcerzak also contributed to a special issue of the *Journal of Business Economics and Political Science* on the United Nations, issued in April 2016 by Turgut Özal University, Turkey.

III. Conclusions

40. **The Working Group is deeply concerned by the escalation of racism, racial discrimination, Afrophobia, racist hate speech, xenophobia and related intolerance targeting Africans and people of African descent in many parts of the world. The Working Group condemns police violence and other forms of violence against people of African descent. In this regard, independent accountability mechanisms, whose officials should include people of African descent, are essential.**

41. **The Working Group country visits and allegations received under the communication procedure show how structures based on racial bias or discrimination, including, racial phenotypes, still have a lasting and detrimental effect on Africans and people of African descent in the diaspora. This legacy must be addressed in an open dialogue in order to understand and address the roots of racial tensions and discrimination in society. In certain societies, the invisibility of people of African descent on account of policy assimilation prevents different forms of intolerance from being addressed appropriately. The collection of disaggregated data along ethnic lines based on voluntary self-identification is an important starting point in the conversation of identifying the disparities between, and addressing the human rights of, people of African descent.**

42. **The Working Group is ready to continue actively participating in the International Decade for People of African Descent and to assist stakeholders and strengthen partnerships between Governments, civil society, Africans and people of African descent in order to fully implement the programme of activities. The Working Group calls on States and civil society to hold joint launchings of the International Decade in their own countries and to adopt positive measures to accelerate the process of its implementation. As part of this process, States are urged to also address the negative racial stereotypes and the blackface phenomenon that people of African descent face. Criminal sanctions must be imposed not just for hate speech, but also for stereotyping. Furthermore, as with hate speech, stereotyping ought to provide a basis for**

damages. Administrative sanctions should also be imposed for words and images that amount not just to hate speech, but also to stereotyping.

43. The Working Group believes that an international forum for people of African descent should be established without further delay and that work should begin on a draft United Nations declaration of the promotion of and full respect for the human rights of people of African descent as it is essential to achieving justice and reparations in that regard.

44. The Working Group welcomes the 10-point plan of the Caribbean Community (CARICOM) established by the Community's Reparations Commission in order to achieve reparatory justice for the region's indigenous and African descendant communities who are the victims of crimes against humanity.

45. The Working Group recognizes that without the essential contribution of civil society, non-governmental organizations and academics, the fight against racism, racial discrimination, Afrophobia, xenophobia, Islamophobia and related intolerance will remain invisible. The link between their work, States and various United Nations mechanisms must be strengthened and made visible by joint equitable partnerships. There must be increased support for civil society engagement with States and the United Nations.

46. The Working Group hopes to have the opportunity to work more closely regarding the Third International Decade for the Eradication of Colonialism (2011-2020) (General Assembly resolution 65/119), and with the African Union, which launched the African Women's Decade 2010-2020 in January 2009.

47. The Working Group reminds Member States of the commitments that they made in the Durban Declaration and Programme of Action and encourages them to develop comprehensive national action plans to tackle racism, such as reinforcing national institutions, legislation, the administration of justice and creating competent national bodies to adequately investigate allegations of racism, racial discrimination, xenophobia and related intolerance.

48. The Working Group encourages Member States to fully embrace the 2030 Agenda for Sustainable Development, which is grounded in international human rights standards and has the imperative of equality and non-discrimination at its core. The 2030 Agenda provides a framework within which countries can integrate human rights into national priorities.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, submitted in accordance with Assembly resolution 70/146.

* A/71/150.

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Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

The Special Rapporteur elaborates on the legal, ethical, scientific and practical arguments against the use of torture, other ill-treatment and coercive methods during interviews of suspects, victims, witnesses and other persons in various investigative contexts. He advocates the development of a universal protocol identifying a set of standards for non-coercive interviewing methods and procedural safeguards that ought, as a matter of law and policy, to be applied at a minimum to all interviews by law enforcement officials, military and intelligence personnel and other bodies with investigative mandates.

I. Activities of the mandate holder

1. The Special Rapporteur conducted a country visit to Mauritania from 25 January to 3 February 2016 and, together with the Special Rapporteur on the independence of judges and lawyers, a country visit to Sri Lanka from 29 April to 7 May.

2. During the week of 7 March, the Special Rapporteur presented several reports to the Human Rights Council, participated in side events and held bilateral meetings with several permanent missions and civil society organizations.

3. On 19 April, the Special Rapporteur appeared before the Senate in Mexico City and met parliamentarians and officials from the Ministry of Foreign Affairs to discuss legislation on torture.

4. On 7 and 8 July, the Special Rapporteur held expert consultations on the topic of the present report, with the support of the Anti-Torture Initiative.

II. Universal protocol for interviews[1]

A. Torture, ill-treatment and coercion during interviews

5. Law enforcement officials[2] and other investigative bodies, including intelligence and military services, play a vital role in serving communities, preventing crime and protecting human rights. In performing their duties, they are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons under questioning, including suspects, witnesses and victims (see Human Rights Council resolution 31/31).

6. The right to be free from torture and ill-treatment is a rule of customary international law and a peremptory *jus cogens* norm of international law applying to all States. It is codified in international and regional treaties and national legal systems globally; it constitutes a grave breach of the Geneva Conventions of 1949 and a violation of common article 3 and of customary international humanitarian law; and it can constitute a crime against humanity or an act of genocide under international criminal law. The obligation to prevent torture and ill-treatment applies

[1] The Special Rapporteur recognizes that in some jurisdictions the word "interrogation" is used to refer to interviewing during criminal investigations and employed in a neutral manner that does not necessarily connote coercion. In the present report, the word "interview" has been chosen deliberately, given that it encompasses the questioning of suspects, witnesses and victims alike. The word further emphasizes the non-adversarial, rapport-based nature of the interview with a suspect, one that first and foremost attempts to make the presumption of innocence operational and suggests a model of criminal investigation that is more likely to be effective in preventing any form of coercion and also be more effective in solving crimes. Throughout the report, the words "interview" and "questioning" are used interchangeably.

[2] The Special Rapporteur uses the term "law enforcement" to refer to traditional law enforcement agencies mandated with police powers, such as arrest, questioning and detention. In jurisdictions in which police powers are also exercised by military or intelligence services, the term "law enforcement officials" is understood as being inclusive of military and intelligence personnel. The Special Rapporteur explicitly references military and intelligence agencies when they wield powers of apprehension, detention and questioning outside the national law enforcement context, such as during military or intelligence operations, including in armed conflict.

at all times, including during the investigation of serious crimes and in situations of armed conflict, and is complemented by a range of attendant standards and procedural safeguards.

7. Nevertheless, the sophisticated normative frameworks in place often do not translate into a reduction in practices of torture, ill-treatment or coercion during questioning, which are frequently used by State agents worldwide during law enforcement investigations of common and serious criminal offences, during military and intelligence operations and during armed conflict.

8. Persons interviewed by authorities during investigations may be confronted with the entire repressive machinery of society. Questioning, in particular of suspects, is inherently associated with risks of intimidation, coercion and mistreatment. The risks are heightened for vulnerable persons and for persons questioned in detention. This holds particularly true during apprehension and the early stages of custody, when the authorities exerting control over the fact and conditions of detention and conducting the investigation are the same.

9. The persistent use of unlawful and improper interviewing practices is triggered by a range of local factors, including the erroneous assumption that mistreatment and coercion are necessary to obtain confessions or elicit information. The misconception that torture is a "necessary evil" is especially prevalent during interviews relating to organized crime and national security offences. In the anti-terrorism context, Governments resort to "ticking bomb scenarios" in attempts to justify the use of abusive and unlawful interviewing practices, implicitly challenging the absolute and non-derogable nature of the torture prohibition under any circumstances. While some have sought to proffer faulty legal interpretations to support the use of torture, a more common policy option has been to refute that certain practices amount to torture or ill-treatment under international law.

10. In many countries, detainees are mistreated during investigations of common crimes. Pressure from politicians, supervisors, judges and prosecutors to solve high volumes of cases and inadequate measures of police performance, including systems of appraisal focusing only on the number of crimes "solved" or convictions, create perverse incentives for arrests and mistreatment. A lack of forensic methodology, training in modern criminal investigation techniques and equipment often also creates the perception that torture, ill-treatment and coercion are the easiest and swiftest ways to elicit confessions or other information.

11. Serious concerns arise in legal systems that place a premium on confessions to establish criminal responsibility. While the admission and realization of guilt can be significant to offenders' rehabilitation and reintegration, the ability to convict suspects solely on the basis of confessions without further corroborating evidence encourages the use of physical or psychological mistreatment or coercion. Similarly, legal systems that de jure establish that extrajudicial confessions are probative of guilt only if corroborated by other evidence nevertheless provide de facto incentives for mistreatment.

12. In some jurisdictions, structural and resource deficiencies in the criminal justice system create conditions conducive to the proliferation of mistreatment. When Governments do not invest sufficient resources in the administration of justice, judges, prosecutors and law enforcement officials lack the necessary training and are overworked, underpaid and more prone to corruption (see

A/HRC/13/39/Add.5). Under such circumstances, it is not uncommon for law enforcement officials to resort to torture or threats of torture to extract money from detainees or their relatives during investigations.

13. Mistreatment is also regularly employed as a means of punishment or reprisals, often owing to the institutional culture of States' law enforcement agencies. In such cases, torture is part of a cultivated culture of fear and used as an instrument of power to exert social control over particular groups or segments of the population.

14. Another recurrent problem is the frequent absence or denial of fundamental procedural safeguards designed to prevent torture and other ill-treatment during questioning. Although international law mandates fundamental safeguards designed to counter the risks of mistreatment in custody,[3] national legislation is often deficient. In cases in which procedural safeguards are enshrined in law, their effective implementation typically remains a major challenge. It is particularly concerning that legal loopholes are frequently exploited to circumvent the rights and safeguards of persons during questioning, giving rise to torture and ill-treatment.

15. The perpetuation of unlawful practices is exacerbated by an absence of determination and commitment to eradicate torture at all times and in all circumstances; a lack of adequate education and training for law enforcement, intelligence, military and medical personnel; deficient complaint, monitoring and investigative mechanisms, and inadequate responses to allegations and complaints; interference with the ability of national monitoring bodies and civil society to gain access to detention places, document violations and represent victims of abuse; and cultures of impunity and pervasive failure to ensure accountability and provide adequate remedies.

B. Arguments against the use of torture, ill-treatment and coercion during interviews

16. The absolute and non-derogable nature of the torture prohibition in international law reflects the exceptional gravity of the crime, which constitutes an immoral affront to human dignity that can never be justified. Torture dehumanizes and denies the inherent dignity of victims by treating their bodies and minds as means to achieving particular ends. It constitutes one of the most extreme forms of suffering that a person can inflict on another and often results in lifelong consequences for victims.

17. History and science offer no body of data on the strategic effectiveness of harsh questioning techniques.[4] The popular belief that torture is an effective way of discovering the truth — or more effective than non-coercive interviewing methods — is perpetuated by misleading depictions in popular media. The use of torture and

[3] For example, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the General Assembly in its resolution 70/175, the Code of Conduct for Law Enforcement Officials, adopted by the Assembly in its resolution 34/169, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the Assembly in its resolution 43/173.

[4] See Darius Rejali, *Torture and Democracy* (Princeton, New Jersey, Princeton University Press, 2007).

ill-treatment has in fact long been associated with high risks of obtaining false confessions and unreliable information. It is well established that victims will say anything — regardless of whether it is true — to appease their tormentors and make the pain stop (see European Court of Human Rights, *Othman (Abu Qatada) v. the United Kingdom*). It follows that the perpetrators cannot reliably assess whether information elicited through mistreatment — if any — is truthful, false or complete. Research on lie detection reveals that trained interviewers can differentiate fabrications from truths at a rate only slightly better than chance (slightly above 50 per cent). Those employing torture and ill-treatment during interviews tend to misread victims and fail to recognize the truth, often perpetuating a vicious cycle of mistreatment and fabrications.[5]

18. Behavioural and brain sciences underlie the recognition that mistreatment and coercion are unreliable and counterproductive means to elicit accurate information. Torture and ill-treatment harm those areas of the brain associated with memory, mood and general cognitive function. Depending on their severity, chronicity and type, associated stressors typically impair encoding, consolidation and retrieval of memories, especially where practices such as repeated suffocation, extended sleep deprivation and caloric restriction are used in combination. Such practices weaken, disorient and confuse subjects, distort their sense of time and render them prone to fabricate memories, even if they are otherwise willing to answer questions.[6] They are also detrimental to the establishment of trust and rapport, and compromise the interviewer's ability to understand a person's values, motivations and knowledge — elements required for a successful interview.

19. Irrefutable evidence from the criminal justice system demonstrates that coercive methods of questioning, even when not amounting to torture, produce false confessions. Coercion can overcome one's will to the point where he or she may doubt his or her own memory, believe accusations made against him or her or confess owing to a conviction that no one will believe his or her innocence (see Supreme Court of Canada, *R. v. Oickle*). DNA exonerations in some jurisdictions reveal that more than one fourth of wrongfully convicted persons made a false confession or incriminating statement.[7] Studies reveal that the more coercive the questioning, the higher the probability that it will result in a false confession, and, in addition, that criminal defendants who falsely confess and plead "not guilty" at trial are nonetheless convicted 81 per cent of the time, often on the basis of their confessions alone.[8]

20. Reliance on inaccurate information obtained through mistreatment has adverse operational consequences, wasting resources better applied to enhance investigative

[5] The United States Senate Select Committee on Intelligence, in its study on the rendition, detention and interrogation programme carried out by the Central Intelligence Agency, concluded that the use of what were termed "enhanced interrogation techniques" was an ineffective means of eliciting intelligence or gaining cooperation from detainees.

[6] See Shane O'Mara, *Why Torture Doesn't Work: The Neuroscience of Interrogation* (Cambridge, Massachusetts, Harvard University Press, 2015).

[7] See Innocence Project, "False confessions or admissions", 2016. Available from www.innocenceproject.org/causes/false-confessions-admissions/.

[8] See Mark A. Costanzo and Ellen Gerrity, "The effects and effectiveness of using torture as an interrogation device: using research to inform the policy debate", *Social Issues and Policy Review*, vol. 3, No. 1 (2009).

capacity or pursue other leads. Intentional misinformation also sends investigators on distracting wild goose chases.

21. Torture, ill-treatment and coercion have devastating long-term consequences for individuals, institutions and society as a whole, causing serious and long-lasting harm to victims and often injuring the humanity and mental health of perpetrators. Such practices corrupt the cultures of institutions that perpetrate, participate in, assist in or overlook them. They debase societies that endorse or accept their use, erode public trust in law enforcement and damage its relationships with communities, with negative consequences for future investigations.

22. Political decisions to resort to torture or ill-treatment and the failure to prevent its use jeopardize States' international cooperation and harm their reputations, moral authority and legacies. Ultimately, torture only breeds more crime by fuelling hatred and a desire for vengeance against the perpetrators. Its use in Northern Ireland in the 1970s and during the so-called "war on terror" has served as a recruiting tool for the groups against which it was perpetrated.

C. Universal protocol for non-coercive, ethically sound, evidence-based and empirically founded interviewing practices

23. Professional interviewers repeatedly emphasize that interviews are conducted much more effectively without resort to torture, ill-treatment or coercion. The Special Rapporteur welcomes strides made by some States in fashioning and implementing human rights-based standards and guidelines for investigations and non-coercive interviewing practices, but is concerned that mistreatment and coercive questioning remain prevalent in many jurisdictions. Some progress notwithstanding, State practice most often ignores the relevant normative frameworks and fails to heed key due process guarantees and procedural safeguards designed to combat abuses committed during investigations and questioning that are codified in national legislation.

24. Noting the growing attention to and momentum around the issues of investigation, questioning and custody practices at the international, regional and national levels (see Human Rights Council resolution 31/31), the Special Rapporteur identifies an auspicious opportunity to promote the development of much-needed standards and guidelines on these fundamental practices, with the aim of assisting States to meet their fundamental legal obligations to prohibit and prevent torture and ill-treatment. He takes particular note of the successful recent revisions of the Standard Minimum Rules for the Treatment of Prisoners (now known as the Nelson Mandela Rules) and the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol) and suggests the organization of a broad public consultation by States and other relevant stakeholders to engage in dialogue on the development of a universal protocol for interviews that is grounded in fundamental principles of international human rights law, including the prohibition of torture, ill-treatment and coercion.

25. Because the principal safeguard against mistreatment during questioning is the interviewing methodology itself, the protocol must outline the guiding principles of an interviewing model that fully respects this prohibition. The protocol must design a model that is non-coercive, ethically sound, evidence-based and research-based and empirically founded. It should champion a culture of human rights compliance,

the highest standards of professionalism and the use of fair and ethical practices that demonstrably enhance the effectiveness of interviews and the elicitation of accurate and reliable information. The protocol must also promote minimum standards and procedural safeguards designed to prevent improper interviewing practices in different investigative contexts. By drawing upon scientific research and documented good practices, the protocol will enhance human rights compliance, improve effective policing and help to keep societies safer.

26. The protocol must also emphasize States' obligations to take measures to incorporate relevant standards into their national systems, promote its use across national institutions and provide training to relevant personnel, including prosecutors, defence lawyers, judges, law enforcement, intelligence and military officials and medical professionals.

27. The adoption and implementation of the protocol in national systems will assist States in fulfilling key legal obligations relating to the questioning of persons and the prohibition of torture and ill-treatment, by expounding and refining the standards[9] that States must incorporate into national law and practice with regard to the conduct of interviews, and when systematically reviewing their interviewing rules, instructions, methods and practices, as mandated under international human rights law (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 11).

Scope of the protocol

28. While recognizing that States face an array of challenges in successfully combating and preventing mistreatment during questioning, the Special Rapporteur insists that the future protocol be of universal application. Except for those lawful limitations demonstrably required by the fact of detention and investigation, persons questioned and/or deprived of their liberty unequivocally retain their non-derogable human rights. The prohibition of torture or ill-treatment and the principle of humane treatment of detainees are fundamental and universally applicable rules and cannot be dependent on the material resources available to States (see A/68/295). It follows that the set of minimum standards identified in the protocol should be applied, as a matter of law and policy, to interviews conducted by all agents of all States.

29. Many safeguards against coercive and abusive questioning techniques can be implemented with limited financial expenditure, in a cost-effective and sustainable manner. Where necessary, however, the protocol may identify additional approaches whereby States with limited material resources can guarantee effective and meaningful implementation and ensure adequate protection against abuses.

30. The protocol must also acknowledge that the successful eradication of torture, ill-treatment and coercion may require greater concerted efforts in some States, especially in jurisdictions in which such practices are routine or systematic. In such cases, it should underline States' obligations to ensure the proper functioning of their criminal justice system, in particular by taking effective measures to combat

[9] For example, Human Rights Council, resolution 31/31; European Court of Human Rights, *Beortegui Martinez v. Spain*; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, second general report on the activities of the Committee (CPT/Inf (92) 3); and Inter-American Commission on Human Rights, report on the human rights of persons deprived of liberty in the Americas (OEA/Ser.L/V/II.Doc.64).

corruption and by providing for adequate selection, training and remuneration of law enforcement and judicial personnel (see Human Rights Council resolution 31/31). Such steps are indispensable to bringing about positive changes in the institutional culture and the mindset of law enforcement and other officials.

31. The protocol must apply to interviews conducted by law enforcement and other investigative bodies such as intelligence and military services and administrative bodies, during counter-terrorism operations and in situations of armed conflict, including extraterritorially. In this regard, the Special Rapporteur is concerned that in some jurisdictions intelligence services have been empowered to apprehend, detain and question persons in connection with national security offences, as a way to circumvent legal and procedural safeguards applicable to traditional law enforcement agencies — a practice that has at times lamentably enabled the perpetration of egregious acts of torture and ill-treatment. The protocol should emphasize that there are no legitimate reasons for granting intelligence agencies such powers duplicating those held by traditional law enforcement bodies. Intelligence agencies mandated by law to exercise such powers must comply fully with international human rights standards, including those pertaining to the rights to liberty, fair trial, the use of torture-tainted information and the absolute prohibition of torture and ill-treatment (see A/HRC/10/3; A/HRC/14/46; and European Court of Human Rights, *Öcalan v. Turkey*). Intelligence services entrusted with police powers must comply with rules applicable to the conduct of interviews in the criminal justice system. The above rationale also applies where military services or other investigative bodies are entrusted with police powers in the national law enforcement context.

32. The Special Rapporteur is concerned by the deprivation of liberty of persons for the sole purpose of questioning, a practice that entails severe risks of torture and ill-treatment. Law enforcement, military and intelligence agencies cannot be permitted to detain persons without probable cause and for the sole purpose of gathering information or intelligence, including in armed conflict (see A/HRC/14/46 and A/HRC/10/3). The apprehension and detention of individuals in the absence of reasonable suspicion that they have committed or are about to commit a criminal offence, or of other internationally accepted lawful grounds for detention, are prohibited. Administrative detention outside armed conflict is prohibited save the "most exceptional circumstances"; when justified by a "present, direct and imperative threat" that cannot be addressed by alternative measures, it must be accompanied by adequate safeguards, last no longer than "absolutely necessary" and be subject to prompt and regular review. When authorized, administrative detention must be ordered, implemented and supervised by judicial authorities. Standards and procedural safeguards applicable to interviews of suspects in the criminal justice systems must equally and unambiguously apply, as a matter of law and policy, to the questioning of persons held in administrative or preventive detention outside of armed conflict (see Human Rights Committee, general comment No. 35 (2014) on liberty and security of person (article 9 of the International Covenant on Civil and Political Rights); and A/56/156).

33. The protection offered by international human rights law remains applicable during armed conflict and supplements that offered by international humanitarian

law.[10] The humane treatment requirements under the Convention against Torture (and customary international law) and international humanitarian law are substantially equivalent; the obligations relating to the prohibition and prevention of torture and ill-treatment in international and non-international armed conflicts are the same, with common article 3 of the Geneva Conventions constituting a minimum baseline of protection applicable at all times (see A/70/303). Most guiding principles, standards and procedural safeguards applicable to interviews conducted in the traditional law enforcement context must be applicable, as a matter of law or of best practice, during interviews conducted in times of war.

34. The standards and procedural safeguards mentioned herein must be guaranteed in law and practice during all interviews by law enforcement agents and other investigative bodies, including intelligence and military services, and must also apply to private contractors and all persons who act, de jure or de facto, on behalf of, in conjunction with or at the behest of the State, under its direction or control or otherwise under colour of law (see Committee against Torture, general comment No. 2 (2008) on the implementation of article 2 by States parties).

III. Elements of a universal protocol for interviews

A. Alternative model of investigative interviewing

1. Legal framework against coercive questioning and techniques

35. The protocol must provide detailed guidance on the purpose and parameters of a human rights-compliant interviewing model that promotes a human rights-based approach, enhances the professionalism and effectiveness of law enforcement and other State agents and is premised on the aim of ensuring that all interviews are conducted without resort to torture, ill-treatment or coercion.

36. Persons interviewed in connection with their alleged role in a criminal offence must not be compelled to testify against themselves or to confess guilt (International Covenant on Civil and Political Rights, art. 14 (3) (g)) and investigating authorities may not resort to "any direct or indirect physical or undue psychological pressure" to induce confessions (see Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (article 14 of the International Covenant on Civil and Political Rights)). Accordingly, the prohibition of torture and ill-treatment is complemented by the prohibition of any form of coercion during the questioning of suspects. The Rome Statute of the International Criminal Court likewise prohibits "any form of coercion, duress or threat" during investigations (art. 55). The protocol must expressly recognize this prohibition and extend it to interviews of witnesses, victims and other persons in the criminal justice system.

[10] Accordingly, civilian internment during both international and non-international armed conflict must remain exceptional, limited in time and accompanied by procedural safeguards akin to those described in paragraph 29 (see Human Rights Committee, general comment No. 35 (2014) on liberty and security of person (article 9 of the International Covenant on Civil and Political Rights); and Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 42 and 78).

37. As a rule of general application, all States must refrain from using any type of coercion when questioning persons under any form of detention. International law acknowledges the need for special protection for all detained persons, who, during questioning, must not be subjected to violence, threats or practices that impair their capacity of decision or their judgment or force them to confess, incriminate themselves or testify against another person (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 21).

38. In situations of armed conflict, the use of torture or any other form of coercion against prisoners of war to extract any type of information from them is strictly prohibited. Those who refuse to provide information cannot "be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind" (Geneva Convention relative to the Treatment of Prisoners of War, art. 17). Physical or moral coercion against protected persons for any purpose, in particular to extract information from them or from third parties, is also forbidden (Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 31). In situations in which persons face criminal prosecutions, the Geneva Conventions and Additional Protocols I and II thereto also provide for the right not to be compelled to testify against themselves or to confess guilt, both during international and non-international armed conflicts (Geneva Convention relative to the Treatment of Prisoners of War, art. 99; Protocol I, art. 75; and Protocol II, art. 6). This must also be understood as the absence of any moral or physical coercion in order to induce them to confess. In situations other than the aforementioned, the prohibition of coercion during questioning should apply as a matter of policy, irrespective of the international or non-international character of the conflict and of the status of the person questioned.

39. Accusatorial models of questioning tend to be confession driven and characterized by a de facto presumption of guilt and the use of confrontation and psychological manipulation. Common manipulative techniques are coercive in nature and likely to impair the free will, judgment and memory of interviewees. Threats, inducements, misleading practices, protracted or suggestive questioning and the use of drugs or hypnosis are examples of problematic practices. Demeaning or condescending comments or accusations based on individual qualities or cultural identities are also of concern.

40. Inducements may consist of promises of immunity or lighter sentences in exchange for confessions. Misleading practices include the use of trickery or deception, including by presenting false evidence, confronting persons with false witnesses or leading one to believe that his or her co-defendants have confessed. These methods are improper because they ultimately deprive a person of his or her freedom of decision through the use of false representations (see E/CN.4/813 and Corr.1). Techniques designed to minimize or maximize the suspect's perceptions of responsibility or blame, including implicit promises of leniency and presentation of false evidence, claims or insinuations about the existence of evidence against him or her, also increase the likelihood of false confessions.

41. Protracted or suggestive interviews, wherein persons are questioned for extended periods without sufficient rest or asked confusing, ambiguous or leading questions with great intensity (see ibid.), are likely to become coercive and

constitute ill-treatment and may induce sleep deprivation, impaired decision-making and a desire to admit anything in order to bring the questioning to an end.[11]

42. Coercive techniques, even when not amounting to torture or ill-treatment, are means to the same ends, administered by State agents to confirm their presumption of guilt. They are likely to produce faulty information and give rise to conditions conducive to the use of torture or ill-treatment. Strengthening protection against coercive questioning methods and championing an interviewing model based on the principle of presumption of innocence are accordingly key to preventing mistreatment during questioning and enhancing authorities' effectiveness.

43. It is well established that the term "cruel, inhuman or degrading treatment or punishment" must be interpreted to extend the widest possible protection against abuses (see the Body of Principles). When persons are deprived of liberty, the prohibition of torture and ill-treatment overlaps with and is supplemented by the principle of humane treatment of detainees (see A/68/295). The European Court of Human Rights, in *Bouyid v. Belgium*, has highlighted the inherent link between concepts of degrading treatment or punishment and human dignity, finding that treatment that "humiliates or debases an individual, show[s] a lack of respect for or diminish[es] his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance" may be characterized as degrading. Any act by law enforcement that diminishes a person's human dignity, including the use of physical force when not strictly necessitated by his or her conduct, violates the prohibition of torture and ill-treatment.

44. Depending on their degree, severity, chronicity and type, undue psychological pressure and manipulative practices may themselves amount to inhuman or degrading treatment. This may be the case, among others, when certain techniques are used in combination, over a lengthy period or against vulnerable persons, including children, persons with psychosocial disabilities, persons who do not understand or adequately speak the language of the interviewing officers and other persons who may be particularly sensitive to coercion owing to their specific needs or physical or emotional development.

45. International and regional human rights mechanisms have to date developed an extensive body of jurisprudence on practices that amount to physical or psychological torture or ill-treatment, including but not limited to punching, kicking, beatings, electrocution, forms of suffocation, burns, use of firearms, mock executions, threats of reprisals against relatives, death threats, restraints in very painful conditions, rape, sexual abuse and humiliation, sleep deprivation, prolonged stress positions, prolonged solitary confinement, incommunicado detention, sensory deprivation, exposure to extreme temperatures or loud music for prolonged periods, dietary adjustments, blindfolding and hooding during questioning, prolonged questioning sessions, removal of clothing, deprivation of all comfort and religious items and exploitation of phobias during questioning (see A/HRC/13/39/Add.5; A/52/44; CCPR/C/USA/CO/3/Rev.1; CAT/C/USA/CO/2; and CAT/C/KAZ/CO/3). Deplorably, such illegal methods have often been combined with poor conditions of detention — which can alone amount to cruel, inhuman or degrading treatment in themselves — to exert additional psychological pressure on detainees to reveal

[11] For example, Christian Meissner, Christopher E. Kelly and Skye A. Woestehoff, "Improving the effectiveness of suspect interrogations", *Annual Review of Law and Social Science*, vol. 11 (2015).

information. The Special Rapporteur recalls that the physical environment and conditions during questioning must be adequate, humane and free from intimidation, so as not to run afoul of the prohibition of torture or ill-treatment.

46. The Special Rapporteur expresses serious concern about the practice of holding terrorism suspects in solitary confinement or other forms of isolation in order to break their resistance to questioning. The imposition of solitary confinement of any duration for the purpose of pressuring persons to confess, provide information or admit guilt violates the prohibition of torture (see A/66/268). Practices such as the "separation" technique described in appendix M to the United States Army field manual on human intelligence collector operations, whereby detainees are isolated and prevented from communicating with anyone except medical, detention and intelligence personnel, in an attempt to decrease their resistance to questioning, are coercive tactics and violate international law.

2. Guiding principles of investigative interviewing

47. Encouragingly, some States have moved away from accusatorial, manipulative and confession-driven interviewing models with a view to increasing accurate and reliable information and minimizing the risks of unreliable information and miscarriages of justice. The essence of an alternative information-gathering model was first captured by the PEACE[12] model of interviewing adopted in 1992 in England and Wales. Investigative interviewing models fashioned after that model were subsequently adopted by other jurisdictions and the International Criminal Court. Initially developed for criminal investigations, models of investigative interviewing can provide positive guidance for the protocol and be applied in a wide range of investigative contexts, including during intelligence and military operations.

48. The investigative interviewing model comprises a number of essential elements that are key to the prevention of mistreatment and coercion and help to guarantee effectiveness. Interviewers must, in particular, seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; scrutinize the interviewee's account and analyse the information obtained against previously available information or evidence; and evaluate each interview with a view to learning and developing additional skills. The remainder of the present section provides an overview of some of these elements, on which the protocol should provide detailed guidance.

49. The protocol must reiterate the precise aim of questioning, namely to obtain accurate and reliable information in order to discover the truth of all relevant facts about matters under investigation. The aim of interviews must not be to elicit confessions or other information reinforcing presumptions of guilt or other assumptions held by officers.[13] Interviews are conducted to make the presumption of

[12] The five steps of the PEACE model are preparation and planning; engage and explain; account; closure; and evaluation.

[13] See the twelfth report on its activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2002) 15).

innocence operational. Officers generate and actively test alternative hypotheses through systematic preparation, empathetic rapport-building, open-ended questions, active listening, strategic probing and disclosure of potential evidence. Such interviews are far more effective and compliant with human rights.

50. Objectivity, impartiality and fairness are critical components of investigative interviews. They require officers to keep an open mind, even when the evidence against a person is strong. An objective, impartial and fair interviewing process will reduce the risks of resorting to confession-oriented techniques or coercion and of eliciting false admissions or faulty intelligence. In criminal investigations, a fair police process will form the preparatory basis for a fair trial.[14] Officers must remain professional and not allow their prejudices, preconceptions or emotions to affect their performance during interviews.

51. Systematic and solid preparation increases the quality and likelihood of successful interviews. Conversely, insufficient preparation is bound to cause setbacks and creates risks that agents will resort to pressure or physical coercion to elicit information or confessions. Adequate preparation requires full knowledge of and compliance with applicable rules of procedure governing the conduct of interviews. To conduct the most effective interview possible, officers should, among other things, have clear knowledge and understanding of all information pertinent to the case, be fully cognizant of the legal definition of the offence under investigation and identify all potential evidence in the case file and every possible explanation of its origin.[15] The preparation of a strategy and interview structure designed to best elicit information is also essential, as is the ability to remain flexible throughout the interview.

52. The development and maintenance of rapport is also a crucial determinant of effective non-coercive interviews. Rapport can help to reduce the interviewee's anxiety, anger or distress, while increasing the likelihood of obtaining more complete and reliable information. Rapport-building techniques must not be used for the purposes of manipulation or to exert undue pressure to induce confessions, which would be incompatible with the purpose and spirit of the investigative interviewing model. The protocol should clearly set out the duty of interviewers to maintain a professional attitude and refrain from using any form of coercion during the entire interview process. It must also emphasize that interviewers ought to obtain the cooperation of persons questioned, rather than to demonstrate their authority or gain control over them, manipulate them or force them to comply with their wishes.

53. It is recommended that interviewers begin each topic by asking open-ended questions and allow the interviewee to provide a free and uninterrupted account of the events under investigation. Contrary to complex, leading or compound questions, open-ended and neutral questions encourage memory retrieval and are less likely to induce admissions against a person's will, influence his or her account or contaminate his or her memory. Broad and open-ended questions will enable innocent suspects to provide information freely, while preventing guilty suspects from understanding their evidentiary significance.

[14] See the European Code of Police Ethics.

[15] For example, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Human Rights in Counter-Terrorism Investigations: A Practical Manual for Law Enforcement Officers* (Warsaw, 2013).

54. As a matter of best practice, interviewers are encouraged to proceed, when necessary, with probing questions designed to elicit information that will test all possible alternative explanations identified during the preparation of the interview. Strategic probing and disclosure of potential evidence allows officers to explore the interviewee's account in depth before proceeding to the next topic, helping to ensure that the presumption of innocence is respected while strengthening the case against a guilty suspect by preventing the subsequent fabrication of an alibi.[16] Although interviewers may be persistent with their line of questioning when probing the interviewee's account, questioning must never become unfair or oppressive.

55. The same guiding principles should apply to interviews of witnesses, victims and other persons in the criminal justice system. The protocol must additionally regulate objective, fair, human rights-based, non-coercive and rapport-based intelligence interviews during intelligence and military operations. Research and experienced practitioners agree that ethical information-gathering approaches similar to those employed in the criminal justice system lead to greater information gains and offer a more effective model than coercive intelligence interviewing.

3. Training and change in culture and mindset

56. The questioning of persons is a specialist task that requires specific training in order to be performed successfully and in accordance with the highest standards of professionalism. The protocol must insist on the importance of adequate and regular training for law enforcement and other personnel involved in the questioning of persons (see A/HRC/4/33/Add.3 and CAT/C/USA/CO/2).

57. The training of interviewers encompasses several components, beginning with effective training in international human rights law, including the prohibition of torture, ill-treatment and other form of duress;[17] where applicable, training on the Geneva Conventions should also be provided. Training should include but not be limited to theoretical knowledge about international and national standards and guidelines relating to questioning, in addition to practical information, preparation and practice in the steps of investigative interviews and exercises designed to facilitate skills development. The use of scenario-based exercises and the recording and review of interviews constitute best practices in this respect. References to empirical and scientific evidence on the unreliability and counterproductiveness of torture and coercion will also help to effect the needed change in mindsets and interviewing culture. Underlining the adverse impact of mistreatment on memory retrieval would be especially beneficial. Training should also include awareness-raising activities on effective protection of and adaptation to the specific needs of vulnerable persons.

58. States must further ensure that supervisors, judicial officers, prosecutors and medical personnel are also trained on international standards relating to the prohibition and prevention of torture, human rights-compliant interviewing techniques and the duties to report, effectively document and investigate allegations of torture and ill-treatment. Raising awareness among all personnel directly or

[16] See Ivar A. Fahsing and Asbjorn Rachlew, "Investigative interviewing in the Nordic region", in *International Developments in Investigative Interviewing*, Tom Williamson, Becky Milne and Stephen P. Savage, eds. (Cullompton, United Kingdom, Willan, 2009).

[17] See the report of the Inter-American Commission on Human Rights on the human rights of persons deprived of liberty in the Americas (OEA/Ser.L/V/II.Doc.64).

indirectly involved in the questioning of persons is a necessary step towards changing law enforcement culture, especially in jurisdictions in which mistreatment is routine or systematic, and towards the effective implementation of the torture prohibition. It is also essential for law enforcement commanders and leaders to be made aware of the detrimental strategic impact that torture and ill-treatment have on the establishment and maintenance of their legitimacy within and relationships with communities.

59. The Special Rapporteur underscores the importance of developing corroborating methods of crime investigation, investing in adequate equipment and effectively training investigators on available modern and scientific investigation techniques. These measures can help to facilitate the transition from confession-led to evidence-led investigations and provide surplus information useful to the preparation and conduct of effective interviews, reducing the risk that officers will resort to mistreatment to extract information.

B. Set of standards and procedural safeguards

60. A number of due process guarantees and procedural safeguards guaranteeing the right to justice and fair trial, and against arbitrary detention, are critical and inextricably linked to the prevention of torture and ill-treatment during questioning. Article 14 of the International Covenant on Civil and Political Rights provides guarantees against the use of all forms of direct or indirect physical or psychological pressure by authorities against a suspect for the purposes of obtaining a confession. The rights not to be compelled to testify against oneself or to confess guilt and to be guaranteed counsel and legal aid are particularly crucial. Aside from safeguarding the fundamental human rights of individuals, these measures benefit societies generally, by fostering trust in institutions, promoting the reliability of evidence and facilitating the effectiveness of national judicial processes (see A/HRC/WGAD/2012/40). Similarly, safeguards enshrined in article 9 of the Covenant help to prevent torture by reducing opportunities and incentives for mistreatment and coercion during detention.

61. The Special Rapporteur examines herein several safeguards of key significance to the future protocol, particularly as applicable to persons in detention. The protocol should also consider other scenarios, including the rights of suspects not deprived of liberty, safeguards attendant to informal questioning and additional preventive measures against mistreatment and coercion. The protocol must account for the reality that torture and ill-treatment during arrest or detention can also take place outside the interview room and induce forced confessions during subsequent questioning.

62. Judicial control of detention is a fundamental safeguard for persons deprived of liberty in connection with criminal charges. Persons detained on criminal charges must not be held in facilities under the control of their interviewers or investigators for more time than is legally required to hold a judicial hearing and obtain a judicial warrant of pretrial detention. This period should never exceed 48 hours, save absolutely exceptional and justified circumstances (see general comment No. 35). Suspects must be transferred to a pretrial facility under a different authority immediately thereafter, after which no further unsupervised contact with interviewers or investigators may be permitted (see A/68/295). As a matter of best

practice, States ought to entrust different bodies with separate chains of command with the detention and questioning of persons, to help to protect detainees from mistreatment and reduce the risk of conditions of detention being used to pressure them during questioning. All detainees must be properly registered from the moment of apprehension, a public centralized detention register must be kept and the chain of custody thoroughly documented (see A/HRC/13/39/Add.5).

63. The practice of detaining persons incommunicado and questioning them in unofficial or secret facilities is of grave concern because it exposes individuals to heightened risks of torture. Secret detention amounts to torture or ill-treatment in itself and should be abolished and criminalized under national law. States must ensure that questioning is conducted only at official and accessible facilities, regardless of the form of detention. In the criminal justice system, any evidence obtained from detainees in unofficial places of detention and not confirmed by them during subsequent interviews at official locations ought to be inadmissible in court (see A/56/156).

1. Information on rights

64. Any person arrested or detained must, at the time of deprivation of liberty and before any questioning, be informed of his or her rights and ways to avail himself or herself of those rights (see the Body of Principles). This includes the right to be informed without delay of the reasons — the factual and legal basis — justifying arrest or detention and the right to bring proceedings before the court and obtain appropriate remedies. Persons arrested or detained in connection with criminal charges are entitled to receive prompt information about the charges (see general comment No. 35).

65. Before the beginning of every interview, the information provided must include, at a minimum, the rights to remain silent during questioning; to a lawyer of one's choice and free legal aid where the interests of justice so require; to consult counsel before questioning and to be questioned in the presence of counsel; and to free and effective interpretation and translation if the individual does not understand or adequately speak the language of questioning (see the Rome Statute, art. 55; and European directive 2012/13/EU).

66. Information should be provided to interviewees in a manner that is sensitive to age, gender and culture and corresponds to the needs of vulnerable persons, and in a language, means, mode and format accessible to and understood by them. Means of verification and documentation that this information was provided must be established, whether by way of printed record, audiotape, videotape or witness accounts (see WGAD/CRP.1/2015).

67. The Special Rapporteur recognizes that the content of some procedural rights may vary, to a limited extent, depending on the legal status of the interviewee and the context of questioning. The provision of precise and accurate information on one's status and rights before questioning is therefore doubly critical. Authorities may not interview persons as "witnesses" or under the guise of "informative talks" in order to evade the legal safeguards attendant to the questioning of suspects. Any person who is under a legal obligation to attend and remain at an establishment for questioning must be afforded the same rights as a suspect. When a person becomes a suspect during questioning, the interview must be suspended and begin again only if the interviewee has been made aware of this change and has been given a full

rundown of his or her rights and is able to fully exercise them (European directive 2012/48/EU).

2. Right of access to counsel

68. The right of access to counsel is one of the most essential safeguards against torture and ill-treatment. Not only does a lawyer's presence act as a deterrent against mistreatment or coercion and facilitate the undertaking of remedial action if mistreatment occurs, but also can protect officials facing unfounded allegations of improper conduct.

69. Access to counsel must be provided immediately after the moment of deprivation of liberty and unequivocally before any questioning by authorities.[18] Counsel must be present for all interviews, and for their entirety (see A/68/295). This right applies to, among others, detention on criminal charges, prisoners of war, criminal detention relating to armed conflict, detention of individuals considered to be civilian internees under international humanitarian law and administrative detention outside of armed conflict (see WGAD/CRP.1/2015).

70. The Special Rapporteur is concerned that, in many jurisdictions, access to a lawyer during questioning is routinely denied or unduly delayed until confessions or incriminating statements are elicited. The protocol must adequately reflect the prohibition on interviewing persons without counsel, except in compelling circumstances or when the interviewee gives his or her voluntary and fully informed consent to waive this right (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; A/68/295; and E/CN.4/813 and Corr.1), and reiterate that access to counsel must be enjoyed by anyone deprived of liberty, regardless of whether the offence in question is considered "minor" or "serious".

71. Compelling circumstances denying access to counsel must be strictly defined in national law and correspond to situations in which there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of persons, or where immediate action by investigators is imperative to prevent the destruction or alteration of essential evidence or to prevent interference with witnesses. Even then, the questioning of suspects without a lawyer must be accompanied by appropriate safeguards, limited to what is strictly necessary to achieve its singular purpose (i.e., obtaining information to address the exigent circumstances) and cannot unduly prejudice the rights of the defence (European directive 2013/48/EU). Defence rights are in principle irreparably prejudiced when incriminating statements made during questioning in the absence of counsel are used for a conviction (see European Court of Human Rights, *Salduz v. Turkey*).

72. Where a person waives the right to counsel, means of verification should be employed to ensure that he or she received clear and sufficient information about the content of the right and the potential consequence of a waiver and to establish that the waiver was voluntary and unequivocal (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems). When a person

[18] See the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in its resolution 67/187; and Human Rights Committee, communication No. 770/1997, *Gidin v. Russian Federation*, views adopted on 20 July 2000.

invoked the right to assistance of counsel during questioning, a waiver cannot be established by evidence that he or she responded to further questioning in the absence of counsel, even if formerly advised of his or her right to remain silent. In such situations, the interview cannot continue until the assistance of counsel is actualized, unless the interviewee initiates further communication with interviewers (see European Court of Human Rights, *Pishchalnikov v. Russia*).

73. The right to a lawyer entails the right to meet in private and consult and communicate in full confidentiality before any interview, which is essential to preserve defence rights and enable detainees to raise issues about treatment in custody.

74. The protocol should further provide practical guidance on the role, rights and responsibilities of lawyers in relation to questioning, including, for example, advice on — and a rundown of potential consequences of — exercising the right to remain silent. It must affirm that counsel must be physically present and able to intervene during interviews to protect the interviewee's rights and ensure fair treatment. Lawyers should be allowed to ask questions, request clarifications, challenge improper or unfair questioning and advise clients without intimidation, hindrance, harassment or improper interference. Lawyers cannot, however, prevent interviewees from answering questions that they wish to answer, reply on their behalf or otherwise unduly interfere with questioning.

75. The protocol should contain guidance on the right to free legal assistance. Many States regrettably still lack the resources and capacity necessary to provide legal aid (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems). In the absence of a sufficient number of certified lawyers and a full-fledged legal aid system covering all stages of deprivation of liberty, authorities should, as an interim measure, grant detainees the right to have a trusted third party present during questioning during initial custody (see CAT/OP/BEN/1). The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, while asserting that lawyers are the first providers of legal aid, confirm that other stakeholders, including non-governmental organizations, community-based organizations, professional bodies and associations and academic institutions, may step in to fulfil this function.

3. Right to remain silent

76. Persons arrested or detained on criminal charges must be informed of their right to remain silent during questioning by law enforcement in accordance with article 14 (3) (g) of the International Covenant on Civil and Political Rights. This right is inherent to the presumption of innocence and key to torture prevention efforts, given that interviewers respecting this right are unlikely to resort to abusive questioning methods. Suspects must be duly warned, at the beginning of every interview, that their words may be used in evidence against them. Persons' willing agreement to provide statements during questioning following this warning cannot be regarded as a fully informed choice when they were not expressly notified of the right to remain silent or when the decision was taken without the assistance of counsel (see European Court of Human Rights, *Stojkovic v. France and Belgium*).

77. Concern is expressed about the drawing of negative inferences from a person's failure to answer questions, and it is recommended that no inferences be drawn "at least where the accused has not had prior consultations with counsel" (see

CCPR/C/IRL/CO/3). The Rome Statute and the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) expressly prohibit adverse inferences being drawn at trial from a suspect's exercise of the right to remain silent, finding that anything to the contrary may improperly imply that a suspect's silence amounts to an admission of guilt and compromise the presumption of innocence.

78. The right to remain silent should equally apply, as a matter of law or policy, to prisoners of war, criminal detention relating to an armed conflict, detention of individuals considered to be civilian internees under international humanitarian law and administrative detention outside of armed conflict. With regard to interviews of witnesses and victims in the criminal justice system, courts alone may compel witness testimony. As a preventive measure against coercion and a matter of good practice, witnesses and victims should not be obliged to answer individual questions by which they could incriminate themselves during interviews.[19]

4. Additional safeguards for vulnerable persons

79. Given that particular groups are more vulnerable during questioning, the protocol should contain specific provisions for, among others, children, women and girls, persons with disabilities, persons belonging to minorities or indigenous groups and non-nationals, including migrants (regardless of migration status), refugees, asylum seekers and stateless persons. The vulnerability of persons should be promptly identified for special consideration of their needs to be reflected in the conduct of interviews and implementation of additional safeguards.

80. With regard to the need to inform persons of their rights during questioning, additional safeguards are required for certain persons, with thorough explanations of the rights of children and persons with intellectual or psychosocial disabilities being provided directly to, among others, their parents, families, guardians or legal representatives (see general comment No. 35; and Inter-American Court of Human Rights, *Tibi v. Ecuador*).

81. A complementary safeguard is the presence of a support person during questioning, in addition to counsel. A child must never be subjected to questioning or requested to make any statement or to sign any document without the presence of a lawyer and, in principle, his or her caregiver or another appropriate adult whose presence is encouraged to help to prevent coercion, reassure the child and limit potential traumatization), at all stages of the investigation and proceedings (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; and Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice). Persons who appear to suffer from psychosocial or intellectual disabilities should be assisted by an independent support person, whether a relative, legal guardian, mental health professional or social worker with relevant experience and training, during questioning.

82. Witnesses, victims, suspects and persons deprived of liberty who do not adequately speak or understand the language of questioning should be entitled to receive the free assistance of an independent, qualified and effective interpreter

[19] See Vivienne O'Connor and Colette Rausch, eds. *Model Codes for Post-Conflict Criminal Justice*, vol. II, *Model Code of Criminal Procedure* (Washington, D.C., USIP Press, 2008), art. 110 (1).

during interviews and, when necessary, during consultations with counsel (see International Covenant on Civil and Political Rights, art. 14 (3) (f)). Persons with sensory impairments likewise have the right to interpreters. When no interpreter is available, a person who knows the interviewee and is able to adequately communicate with him or her may be invited to act as one; alternatively, the interviewee should be asked and/or be allowed to answer questions in writing in his or her preferred language.

83. The interpreter's role during questioning is to facilitate communication neutrally and objectively. His or her presence serves as a safeguard against mistreatment and coercion. The protocol should provide practical guidance as to the role, rights and responsibilities of interpreters during the conduct of interviews and emphasize that the right to interpretation applies to the questioning of all persons who are arrested or deprived of liberty, including during armed conflict and in administrative detention (Body of Principles, principle 14).

5. Recording

84. The recording of interviews is a fundamental safeguard against torture, ill-treatment and coercion and ought to apply in the criminal justice system and in connection to any form of detention. Every reasonable effort must be made to record interviews, by audio or video, in their entirety. Where circumstances preclude or when the interviewee objects to electronic recording, the reasons should be stated in writing and a comprehensive written record of questioning must be kept. Accurate records of all interviews must be kept and safely stored, and evidence from non-recorded interviews should be excluded from court proceedings (see A/56/156).

85. Suspect interviews must be at least audio, and preferably video, recorded (see A/HRC/4/33/Add.3 and A/68/295). Video recorders should capture the entire interview room, including all persons present. Video recording discourages torture while providing an authentic and complete record that can be reviewed during the investigation and used for training purposes. It cannot, however, be used as an alternative to the presence of counsel (see CAT/C/AUT/CO/3 and A/HRC/25/60/Add.1). The Special Rapporteur acknowledges the financial implications associated with the use of video-recording equipment. The protocol may explore alternative solutions, such as limiting the mandatory use of audiovisual recording to interviews of suspects, vulnerable victims or witnesses.

86. Recording should not be limited to confessions or other incriminating statements. Whatever the format, several elements must be recorded during an interview, including: its place, date, time and duration; the intervals between sessions; the identity of the interviewers and any other persons present and any changes in individuals present during questioning (see Human Rights Council resolution 31/31); confirmation that the interviewee was informed of his or her rights and availed himself or herself of the opportunity to exercise them and confirmation of any voluntary waiver; the substance and content of questions asked and answers, in addition to any other information, provided by the interviewer or interviewers or the suspect (see the Luanda Guidelines, guideline 9 (e)); and the time and reasons for any interruption and time of resumption of the interview (rules of procedure and evidence of the International Criminal Court, rule 112 (1)).

87. The records should be made available to the interviewee and his or her counsel. The interviewee should have the opportunity to verify that the written

record, if used, accurately reflects his or her statements. As a matter of good practice, all persons present during questioning may be asked to sign the written record to attest to their presence and its accuracy. Audiovisual recordings must be clearly identified, properly labelled, safely stored and preserved. Destroying or tampering with records establishing proof of mistreatment should be criminalized under national law.

6. Medical examination

88. International standards provide for prompt and regular access to medical care for persons deprived of liberty. States are obligated to guarantee the availability of prompt, independent, impartial, adequate and consensual medical examinations at the time of arrest and at regular intervals thereafter. Medical examinations must also be provided as soon as a detainee enters a custodial or interview facility and upon each transfer. Prompt, independent, impartial and professional examinations in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be carried out pursuant to allegations of mistreatment or any sign that mistreatment may have occurred (see A/68/295 and E/CN.4/2004/56). The well-established prohibition against medical personnel engaging, actively or passively, in acts that may constitute participation in, complicity or acquiescence in, incitement to or attempts to commit torture or ill-treatment (see CAT/C/51/4) merits recalling.[20]

89. Examples of other safeguards against mistreatment and coercion during questioning include ensuring that no interview occurs without direct or indirect supervision, among others by way of one-sided mirrors, live-feed or review of recordings. Save exceptional circumstances, strict national regulations must ensure that detained persons may not be subjected to questioning for more than two hours without a break and must be provided adequate breaks for refreshments and be allowed uninterrupted periods of at least eight hours for rest — free from questioning or any activity in connection with the investigation — every 24 hours.[21] Save in compelling circumstances, no interview should happen at night.

C. Accountability and remedies

90. Accountability is critical to preventing the recurrence of human rights violations. The protocol must reiterate States' obligations to combat impunity and ensure accountability and the provision of remedies for torture and ill-treatment committed during questioning.

1. Complaint mechanisms, investigations and sanctions

91. Victim of torture or ill-treatment must have access to impartial and effective complaint mechanisms and be protected from retaliation and reprisals. All

[20] See the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194); and the Declaration of Tokyo.

[21] See the report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 17 June 2009 (CPT/Inf (2011) 13).

complaints of mistreatment must be transmitted without screening to external independent bodies for prompt, impartial, thorough and effective investigation. Even in the absence of complaints, States have a duty to conduct investigations wherever there are reasonable grounds to believe that an act of torture or ill-treatment occurred in any territory under their jurisdiction (see Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties; and A/68/295).

92. Where investigations confirm allegations of mistreatment, victims must be provided with effective remedies and redress, including fair and adequate compensation, and as full rehabilitation as possible. Those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate such acts of mistreatment must be brought to justice and punished in a manner commensurate with the gravity of crimes (see Human Rights Council resolution 31/31).

93. Law enforcement, intelligence and military officials who have reason to believe that torture or ill-treatment has occurred or is about to occur should report it to their superiors and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers, while medical professionals also have an obligation to report and document any signs of mistreatment that they observe (Nelson Mandela Rules, rule 34).

94. The obligation to report mistreatment should be enshrined in national law, with appropriate sanctions for non-reporting and protections for those who report.[22] The duty to report should be extended to violations of other standards and safeguards, including the prohibition against compelling detainees to confess, incriminate themselves or testify against others, and subjecting them to coercion, threats or practices impairing their judgment or decision-making capacities (Body of Principles, principle 7).

95. All violations, including of the right to be properly informed of one's rights and to legal assistance, must be impartially investigated upon complaint and subject to appropriate sanctions. The protocol should consider prospective remedies and sanctions, such as disciplinary or administrative action and obligation to undertake additional training, for breaches of standards and attendant procedural safeguards designed to prevent the use of coercive interviewing practices.

2. Exclusion of evidence

96. Statements, documentary or other evidence elicited through torture and ill-treatment are inadmissible in any proceedings, except against suspected perpetrators. The exclusionary rule is a non-derogable norm of customary international law. It is fundamental to uphold the prohibition of torture and ill-treatment by providing a disincentive to them. The rule applies to mistreatment of both suspects and third parties, including witnesses, and against evidence obtained in a third State, and regardless of whether the evidence is corroborated or is uniquely decisive for the case. The exclusionary rule applies in full to the collecting, sharing and receiving of any information tainted by mistreatment (see A/HRC/25/60).

[22] See the Code of Conduct for Law Enforcement Officials, art. 8, commentary.

97. The exclusionary rule extends to any form of coercion. Confessions of guilt are valid only if made without coercion of any kind (see American Convention on Human Rights, art. 8 (3)). The Luanda Guidelines recall that confessions or other evidence obtained by any means of coercion or force, including during incommunicado detention, cannot be admitted as evidence or considered as probative of any facts at trial or sentencing.

98. The exclusionary rule also applies to evidence gathered or derived from information obtained under duress (see Inter-American Court of Human Rights, *Cabrera García and Montiel Flores v. Mexico*). States must carry the burden of proving that confessions were obtained without duress, intimidation or inducements.[23] As a matter of best practice, the exclusionary rule should also apply to collecting, sharing and receiving information tainted by any form of coercion.

99. Coerced confessions are regrettably admitted into evidence in many jurisdictions, in particular where law enforcement relies on confessions as the principal means of solving cases and courts fail to put an end to these practices. The protocol must address the need to change the culture of tolerance and impunity for coerced confessions in such cases. National legislation must accept confessions only when made in the presence of competent and independent counsel (and support persons when appropriate) and confirmed before an independent judge (see A/HRC/13/39/Add.5 and A/HRC/4/33/Add.3). Courts should never admit extrajudicial confessions that are uncorroborated by other evidence or that have been recanted (see A/HRC/25/60). If doubts arise about the voluntariness of a person's statements, as when no information about the circumstances of the statement is available or when pursuant to arbitrary, secret or incommunicado detention, the statement should be excluded regardless of direct evidence or knowledge of abuse (see A/63/223).

100. National laws must provide for the exclusion of all evidence obtained in violation of safeguards designed to prevent mistreatment (see A/HRC/25/60), such as confessions or incriminating statements obtained in violation of one's rights to be informed of his or her rights and legal status before questioning, or duly warned that his or her words may be recorded and used in evidence against him or her. Evidence should also be excluded when access to counsel is unduly delayed or denied, or involuntarily waived; whenever specific safeguards applicable to the questioning of vulnerable persons are infringed; and when persons are denied adequate breaks and periods of rest during interviews save compelling circumstances. The protocol should account for situations where evidence or information is obtained in violation of preventive safeguards and the accused takes a plea without trial.

IV. Conclusions and recommendations

101. **The Special Rapporteur calls upon States to spearhead the development of a universal protocol aiming to ensure that no person is subjected to torture, ill-treatment or coercion, including any forms of violence, duress or threat. A protocol, to be developed in collaboration with relevant international and regional human rights mechanisms, civil society and experts, must be grounded**

[23] See the report of the Inter-American Commission on Human Rights on the human rights of persons deprived of liberty in the Americas (OEA/Ser.L/V/II.Doc.64).

in fundamental principles of international human rights law and foremost in the absolute prohibition of torture and ill-treatment. The first step in this process ought to be the convening of a broad public consultation designed to set the parameters for the collaborative development of the protocol by the relevant stakeholders.

102. The model promoted by the protocol must promote effective, ethical and non-coercive interviewing and be centred on the principles of presumption of innocence and the pursuit of truth. By moving away from accusatory, manipulative and confession-driven techniques to an investigative interviewing model, States will enhance not only the human rights compliance of their questioning practices, but also their effectiveness in solving crimes and keeping societies safe.

103. The protocol ought to elaborate on a fundamental set of standards and procedural safeguards designed to protect the physical and mental integrity of all persons during questioning. In this respect, the Special Rapporteur calls upon States to consider adopting the elements considered herein (without prejudice to other elements suggested by experts and stakeholders), which should apply, as a matter of law and policy, at a minimum, to all interviews by law enforcement officials and other intelligence, military and administrative bodies with an investigative mandate, as well to those conducted by private contractors and other proxy agents of the State. The protocol should also provide for accountability mechanisms and appropriate remedies for victims.